MISSISSIPPI CODE 1972
Annotated

Title 41

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MISSISSIPPI CODE

1972

ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

VOLUME ELEVEN

PUBLIC HEALTH

§§ 41-1-1 to 41-135-9

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2018 REGULAR LEGISLATIVE SESSION

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PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major by-product of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams.

The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. Summer
Attorney General

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PUBLISHER'S FOREWORD

This 2018 Replacement Volume 11 of the Mississippi Code of 1972 Annotated represents material appearing in the original 1973 bound volume, the 2001 Replacement Volume 11, the 2005 Replacement Volume 11, the 2009 Replacement Volume 11, and the 2013 Replacement Volume 11, as well as reflecting amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2018 Regular Legislative Session.

This volume contains the text of Title 41, of the Mississippi Code of 1972 Annotated, as amended through the 2018 Regular Legislative Session.

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals decisions and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd Series
Mississippi College Law Review
Mississippi Law Journal

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

A comprehensive Index appears at the end of this volume.

PUBLISHER'S FOREWORD

Visit the LexisNexis website at http://www.lexisnexis.com for an online bookstore, technical support, customer support, and other company information.

For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22906-5389.

September 2018 LexisNexis

User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

— Advance Code Service
— Advance Sheets
— Amendment Notes
— Analyses
— Code Status
— Comparable Legislation from other States
— Court Rules
— Cross References
— Editor's Notes
— Effective Dates
— Federal Aspects
— History Notes
— Index
— Joint Legislative Committee Notes
— Judicial Decisions
— Opinions of the Attorney General
— Organization and Numbering System
— Placement of Notes
— Replacement Volumes
— Research and Practice References
— Statute Headings
— Tables

If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22902-5389.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted. Amendment notes are retained online indefinitely.

ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

COMPARABLE LEGISLATION FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooperation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects*.

COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Legislation from other States* and *Federal Aspects*.

EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates*.

EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor.

FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Legislation from other States*.

HISTORY NOTES

Each section of the Code is followed by a brief note showing the acts of the Legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The history note follows the section text, preceding any other annotations for the section. Information in the history note is listed in chronological order, first by Codes, then by Laws, with the most recent information listed last. If a section has been renumbered, the former number will appear in the history note.

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading "Judicial Decisions." Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called "catchlines." The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with "In general" first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading "Decisions under former law."

OPINIONS OF THE ATTORNEY GENERAL

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading "Opinions of the Attorney General."

ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

STATUTE HEADINGS

Headings or “catchlines” for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
- Sections of the Code of 1942 carried into the Code of 1972.
- Allocation of Acts of Legislature, 1931 — 1972.
- Allocation of Acts of Legislature, 1972 — present.
- Consolidated Tables of amendments and repeals of 1942 Code sections.
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CHAPTER 1.

MISSISSIPPI DEPARTMENT OF PUBLIC HEALTH [REPEALED]

Sec.
41-1-1 through 41-1-17. Repealed.

§§ 41-1-1 through 41-1-17. Repealed.

Repealed by Laws 1982, ch. 494, § 16, eff from and after July 1, 1982.

[Codes, 1906, §§ 1640-1647; Hemingway's 1917, §§ 4818-4824; 1930, §§ 4860-4867; 1942, §§ 7016-7023.5; Laws, 1897, ch. 15; Laws, 1970, ch. 363, § 4]

Editor's Notes —

Former §§ 41-1-1 through 41-1-17 created the Mississippi Department of Public Health.

CHAPTER 3.

STATE BOARD OF HEALTH; LOCAL HEALTH BOARDS AND OFFICERS

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41-3-1.	Repealed.
41-3-1.1.	Reconstitution of State Board of Health; qualifications, appointment, and terms of members; statement of economic interest; recusal from participation in certain matters [Repealed effective July 1, 2021].
41-3-3.	Oath of members [Repealed effective July 1, 2021].
41-3-4.	Chairman and vice-chairman; meetings; automatic termination of members' terms of office for nonattendance; compensation [Repealed effective July 1, 2021].
41-3-5.	Repealed.
41-3-5.1.	Executive officer; qualifications; term of office; removal [Repealed effective July 1, 2021].
41-3-6.	State Board of Health to review existing legislation pertaining to public health and to submit new legislation [Repealed effective July 1, 2021].
41-3-7.	Repealed.
41-3-9 and 41-3-11.	Repealed.
41-3-13.	Findings; WISEWOMAN and WISEMAN pilot programs established to reduce the incidences of certain chronic diseases among Mississippians through education, prevention and early screening and detection.
41-3-15.	General powers, duties and authority of State Board of Health; certain specific powers of State Department of Health; general powers and duties of executive director; establishment of office of rural health [Repealed effective July 1, 2020; Repealed effective July 1, 2021; see Editor's note].
41-3-16.	Local governments and rural water systems improvements revolving loan and grant program [Repealed effective July 1, 2021].
41-3-17.	Power to make and publish rules and regulations [Repealed effective July 1, 2021].
41-3-18.	Assessment of fees [Repealed effective July 1, 2020; Repealed effective July 1, 2021; See Editor's note].
41-3-19.	Report to the Governor [Repealed effective July 1, 2021].
41-3-20.	Repeal of Sections 41-3-1.1 through 41-3-19.
41-3-21.	Mississippi Public Health Laboratory created; powers and duties.
41-3-22.	Mississippi State Public Health Laboratory named the Dr. F.E. "Ed" Thompson, Jr., Mississippi State Public Health Laboratory.
41-3-23.	Mississippi Public Health Laboratory Fund established; use of other funds to support Mississippi Public Health Laboratory authorized.
41-3-25 through 41-3-29.	Repealed.
41-3-30.	Repealed.
41-3-31 through 41-3-35.	Repealed.
41-3-37.	Appointment of county health officer.
41-3-39.	Repealed.
41-3-41.	Duties of county health officer.
41-3-43.	County department of health; director.
41-3-45.	Term of office of director; removal.
41-3-47.	Repealed.
41-3-49.	Powers and duties of director.
41-3-51.	Records and reports of director.
41-3-53.	Maintenance of county department of health.

Sec.
41-3-55. Repealed.
41-3-57. Municipal regulation of health.
41-3-59. Violation of health rules.
41-3-61. Legislative findings about patient-centered medical homes; State Board of Health to adopt guidelines applicable to physician practices, nurse practitioner practices and physician assistant practices that incorporate principles of patient-centered medical home.
41-3-63. "Mary D. Osborne Building" renamed the "Dr. Alton B. Cobb — Mary D. Osborne State Public Health Building.".
41-3-65. Increase of fees for services or issuance and renewal of licenses and registrations [Repealed effective July 1, 2020].

§ 41-3-1. Repealed.

Repealed by Laws, 2007, ch. 514, § 1, eff March 30, 2007.

§ 41-3-1. [Codes, 1892, § 2267; 1906, § 2482; Hemingway's 1917, § 4831; 1930, § 4868; 1942, § 7024; Laws, 1926, ch. 310; Laws, 1960, ch. 351, § 1; Laws, 1966, ch. 456, § 1; Laws, 1972, ch. 336, § 1; Laws, 1977, ch. 377; Laws, 1980, ch. 465, § 1; reenacted without change, Laws, 1982, ch. 494, § 1; reenacted, Laws, 1990, ch. 568, § 1; reenacted without change, Laws, 1994, ch. 462, § 1; reenacted, Laws, 1995, ch. 363, § 1; reenacted without change, Laws, 2001, ch. 420, § 1; Laws, 2003, ch. 542, § 1, eff from and after July 1, 2003.]

Editor's Notes —

Former § 41-3-1 provided for the organization of the State Board of Health. For reconstitution of the State Board of Health, see § 41-3-1.1.

RESEARCH REFERENCES

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39 Am. Jur. 2d, Health §§ 1 et seq.

CJS.

39A C.J.S., Health and Environment §§ 9 et seq.

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§ 41-3-1.1. Reconstitution of State Board of Health; qualifications, appointment, and terms of members; statement of economic interest; recusal from participation in certain matters [Repealed effective July 1, 2021].

(1) The State Board of Health is continued and reconstituted as follows:

There is created the State Board of Health which, from and after March 30, 2007, shall consist of eleven (11) members appointed with the advice and consent of the Senate, as follows:

(a) Five (5) members of the board shall be currently licensed physicians of good professional standing who have had at least seven (7) years' experience in the practice of medicine in this state. Three (3) members shall be appointed by the Governor, one (1) member shall be appointed by the

Lieutenant Governor, and one (1) member shall be appointed by the Attorney General, in the manner provided in paragraph (d) of this subsection (1).

(b) Six (6) members of the board shall be individuals who have a background in public health or an interest in public health who are not currently or formerly licensed physicians. Four (4) of those members shall be appointed by the Governor, one (1) of those members shall be appointed by the Lieutenant Governor, and one (1) of those members shall be appointed by the Attorney General, in the manner provided in paragraph (d) of this subsection (1).

(c) The Governor, Lieutenant Governor and Attorney General shall give due regard to geographic distribution, race and gender in making their appointments to the board. It is the intent of the Legislature that the membership of the board reflect the population of the State of Mississippi. Of the Governor's appointments, one (1) member of the board shall be appointed from each of the four (4) congressional districts as constituted on June 30, 2007, and one (1) member of the board shall be appointed from each of the three (3) Supreme Court districts as constituted on June 30, 2007. Of the Lieutenant Governor's appointments, one (1) member of the board shall be appointed from the First Congressional District and one (1) member of the board shall be appointed from the Fourth Congressional District as constituted on June 30, 2007. Of the Attorney General's appointments, one (1) member of the board shall be appointed from the Second Congressional District and one (1) member of the board shall be appointed from the Third Congressional District as constituted on June 30, 2007.

(d) The initial members of the board shall be appointed for staggered terms, as follows: Of the Governor's appointments, two (2) members shall be appointed for terms that end on June 30, 2009; two (2) members shall be appointed for terms that end on June 30, 2011; and three (3) members shall be appointed for terms that end on June 30, 2013. Of the Lieutenant Governor's appointments, one (1) member shall be appointed for a term that ends on June 30, 2009; and one (1) member shall be appointed for a term that ends on June 30, 2013. Of the Attorney General's appointments, one (1) member shall be appointed for a term that ends on June 30, 2009; and one (1) member shall be appointed for a term that ends on June 30, 2011.

A member of the board serving before January 1, 2007, shall be eligible for reappointment to the reconstituted board unless the person is disqualified under subsection (4) of this section.

(2) At the expiration of the terms of the initial members, all members of the board shall be appointed by the Governor, in the same manner and from the same districts prescribed in subsection (1) of this section, for terms of six (6) years from the expiration of the previous term and thereafter until his or her successor is duly appointed. Vacancies in office shall be filled by appointment in the same manner as the appointment to the position that becomes vacant, subject to the advice and consent of the Senate at the next regular session of the Legislature. An appointment to fill a vacancy other than by expiration of a term of office shall be for the balance of the unexpired term and thereafter until his or her successor is duly appointed.

(3) The Lieutenant Governor may designate one (1) Senator and the Speaker of the House of Representatives may designate one (1) Representative to attend any meeting of the State Board of Health. The appointing authorities may designate alternate members from their respective houses to serve when the regular designees are unable to attend the meetings of the board. Those legislative designees shall have no jurisdiction or vote on any matter within the jurisdiction of the board. For attending meetings of the board, the legislators shall receive per diem and expenses, which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem and expenses for attending meetings of the board will be paid while the Legislature is in session. No per diem and expenses will be paid except for attending meetings of the board without prior approval of the proper committee in their respective houses.

(4)(a) All members of the State Board of Health shall file with the Mississippi Ethics Commission, before the first day of May each year, the statement of economic interest as required by Sections 25-4-25 through 25-4-29.

(b) No member of the board shall participate in any action by the board or department if that action could have any monetary effect on any business with which that member is associated, as defined in Section 25-4-103.

(c) When any matter in which a member may not participate comes before the board or department, that member must fully recuse himself or herself from the entire matter. The member shall avoid debating, discussing or taking action on the subject matter during official meetings or deliberations by leaving the meeting room before the matter comes before the board and by returning only after the discussion, vote or other action is completed. The member shall not discuss the matter with other members, department staff or any other person. Any minutes or other record of the meeting shall accurately reflect the recusal. If a member is uncertain whether recusal is required, the member shall follow the determination of the Mississippi Ethics Commission. The commission may delegate that determination to its executive director.

(d) Upon a determination by the board or by any court of competent jurisdiction that a member of the board has violated the provisions of this subsection (4) regarding recusal, the member shall be removed from office. Any member of the board who violates the provisions of this section regarding recusal also shall be subject to the penalties set forth in Sections 25-4-109 through 25-4-117. After removal from office, the member shall not be eligible for appointment to any agency, board or commission of the state for a period of two (2) years. Nothing in this section shall be construed to limit the restrictions codified in Section 25-4-105.

HISTORY:

Laws, 2007, ch. 514, § 2; reenacted without change, Laws, 2010, ch. 505, § 1; reenacted without change, Laws, 2014, ch. 352, § 1; reenacted without change, Laws, 2017, ch. 374, § 1, eff from and after July 1, 2017.

Editor's Notes —

For repeal date of this section, see § 41-3-20.

Laws of 2007, ch. 514, § 22 provides as follows:

"SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act." Laws of 2007, ch. 514 was approved on March 30, 2007.

Laws of 2010, ch. 556, § 1, provides:

"SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

"Section 18. This act shall take effect and be in force from and after May 1, 2010."

Amendment Notes —

The 2017 amendment reenacted the section without change.

Cross References —

Mississippi Ethics Commission generally, see §§ 25-4-1 et seq.

Conflicts of interest generally, see §§ 25-4-101 et seq.

Executive officer to head State Board of Health, see § 41-3-5.1.

General powers and duties of executive officer, see § 41-3-15.

General powers and duties of the State Board of Health, see § 41-3-15.

Duties of department as lead agency for Early Intervention Act for Infants and Toddlers, see §§ 41-87-1 et seq.

Duties and responsibilities of state board of health in the regulation of hearing aid dealers, see §§ 73-14-1 et seq.

Powers and duties of the State Board of Health with respect to the Mississippi Occupational Therapy Practice Act, see § 73-24-1 et. seq.

§ 41-3-3. Oath of members [Repealed effective July 1, 2021].

Each person appointed as a member of the State Board of Health shall immediately take the oath prescribed by Section 268 of the Constitution and file a certificate thereof in the Office of the Secretary of State. Thereupon a commission shall be issued to him under the terms as specified in Section 41-3-1.

HISTORY:

Codes, 1892, § 2268; 1906, § 2483; Hemingway's 1917, § 4832; 1930, § 4869; 1942, § 7025; Laws, 1924, ch. 313; reenacted without change, Laws, 1982, ch. 494, § 2; reenacted, Laws, 1990, ch. 568, § 2; reenacted without change, Laws, 1994, ch. 462, § 2; reenacted, Laws, 1995, ch. 363, § 2; reenacted without change, Laws, 2001, ch. 420, § 2; reenacted without change, Laws, 2007, ch. 514, § 3; reenacted without change, Laws, 2010, ch. 505, § 2; reenacted without change, Laws, 2014, ch. 352, § 2; reenacted without change, Laws, 2017, ch. 374, § 2, eff from and after July 1, 2017.

Editor's Notes —

For repeal date of this section, see § 41-3-20.

Laws of 2007, ch. 514, § 22 provides as follows:

"SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act." Laws of 2007, ch. 514 was approved on March 30, 2007.

Laws of 2010, ch. 556, § 1, provides:

"SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

"Section 18. This act shall take effect and be in force from and after May 1, 2010."

Section 41-3-1 referred to in the last sentence was repealed by Laws, 2007, ch. 514, § 1, effective March 30, 2007. For reconstitution of the State Board of Health, see § 41–3–1.1.

Amendment Notes —

The 2017 amendment reenacted the section without change.

Cross References —

Official oath, generally, see §§ 25-1-9, 25-1-11.

§ 41-3-4. Chairman and vice-chairman; meetings; automatic termination of members' terms of office for nonattendance; compensation [Repealed effective July 1, 2021].

(1) There shall be a Chairman and Vice Chairman of the State Board of Health elected by and from its membership at the first meeting of the board;

and the chairman shall be the presiding officer of the board. The chairman shall always be a physician member of the board. The board shall adopt rules and regulations governing times and places for meetings, and governing the manner of conducting its business. The board shall meet not less frequently than once each quarter, and at such other times as determined to be necessary. The term of office of any member who does not attend three (3) consecutive regular meetings of the board shall be automatically terminated, and the position shall be considered as vacant, except in cases of the serious illness of a board member or of his or her immediate family member. All meetings of the board shall be called by the chairman or by a majority of the members of the board, except the first meeting of the initial members of the reconstituted board, which shall be called by the Governor.

(2) The members of the board shall receive no annual salary but shall receive per diem compensation as is authorized by law for each day devoted to the discharge of official board duties and shall be entitled to reimbursement for all actual and necessary expenses incurred in the discharge of their duties, including mileage as authorized by Section 25-3-41.

HISTORY:

Laws, 1980, ch. 465, § 2; Laws, 1980, ch. 560, § 31; reenacted without change, Laws, 1982, ch. 494, § 3; reenacted, Laws, 1990, ch. 568, § 3; reenacted without change, Laws, 1994, ch. 462, § 3; reenacted, Laws, 1995, ch. 363, § 3; reenacted without change, Laws, 2001, ch. 420, § 3; reenacted and amended, Laws, 2007, ch. 514, § 4; reenacted without change, Laws, 2010, ch. 505, § 3; reenacted without change, Laws, 2014, ch. 352, § 3; reenacted without change, Laws, 2017, ch. 374, § 3, eff from and after July 1, 2017.

Editor's Notes —

For repeal date of this section, see § 41-3-20.

Laws of 2007, ch. 514, § 22 provides as follows:

"SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act." Laws of 2007, ch. 514 was approved on March 30, 2007.

Laws of 2010, ch. 556, § 1, provides:

"SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

"Section 18. This act shall take effect and be in force from and after May 1, 2010."

Amendment Notes —

The 2017 amendment reenacted the section without change.

Cross References —

For provision authorizing uniform per diem compensation of officers and employees of state boards, commissions and the like, see § 25-3-69.

§ 41-3-5. Repealed.

Repealed by Laws of 2007, ch. 514, § 1, eff June 30, 2007.

§ 41-3-5. [Codes, 1892, § 2269; 1906, § 2484; Hemingway's 1917, § 4833; 1930, § 4870; 1942, § 7026; Laws, 1924, ch. 313; Laws, 1944, ch. 270; Laws, 1948, ch. 395, § 1; Laws, 1958, ch. 360; Laws, 1966, ch. 445, § 19; Laws, 1977, ch. 404; Laws, 1978, ch. 520, § 10; Laws, 1980, ch. 465, § 3; reenacted and amended, Laws, 1982, ch. 494, § 4; reenacted, Laws, 1990, ch. 568, § 4; reenacted without change, Laws, 1994, ch. 462, § 4; reenacted, Laws, 1995, ch. 363, § 4; reenacted without change, Laws, 2001, ch. 420, § 4, eff from and after June 30, 2001.]

Editor's Notes —

Former § 41-3-5 related to the election, qualifications, authority and responsibilities of the executive officer of the State Board of Health.

§ 41-3-5.1. Executive officer; qualifications; term of office; removal [Repealed effective July 1, 2021].

The State Department of Health shall be headed by an executive officer who shall be appointed by the State Board of Health. The executive officer shall be either a physician who has earned a graduate degree in public health or health care administration, or a physician who in the opinion of the board is fitted and equipped to execute the duties incumbent upon him or her by law. The executive officer shall not engage in the private practice of medicine. The term of office of the executive officer shall be six (6) years, and the executive officer may be removed for cause by majority vote of the members of the board. The executive officer shall be subject to such rules and regulations as may be prescribed by the State Board of Health. The executive officer shall be the State Health Officer with such authority and responsibility as is prescribed by law.

HISTORY:

Laws, 2007, ch. 514, § 5; reenacted without change, Laws, 2010, ch. 505, § 4; reenacted without change, Laws, 2014, ch. 352, § 4; reenacted without change, Laws, 2017, ch. 374, § 4, eff from and after July 1, 2017.

Editor's Notes —

For repeal date of this section, see § 41-3-20.

Laws of 2007, ch. 514, § 22 provides as follows:

"SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act." Laws of 2007, ch. 514 was approved on March 30, 2007.

Laws of 2010, ch. 556, § 1, provides:

"SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

"Section 18. This act shall take effect and be in force from and after May 1, 2010."

Amendment Notes —

The 2017 amendment reenacted the section without change.

Cross References —

General powers and duties of executive officer of the state department of health, see § 41-3-15.

Power of the executive officer of the board of health to appoint a county health officer, see § 41-3-37.

Reports of communicable and infectious diseases, see § 41-23-1.

General powers of director under Safe Drinking Water Law of 1976, see § 41-26-19.

Tuberculosis control, see §§ 41-33-1 et seq.

§ 41-3-6. State Board of Health to review existing legislation pertaining to public health and to submit new legislation [Repealed effective July 1, 2021].

It shall be the duty of the State Board of Health to review the statutes of the State of Mississippi affecting public health and submit at least thirty (30) days prior to each regular session of the Legislature any proposed legislation as may be necessary to enhance the effective and efficient delivery of public health services and to bring existing statutes into compliance with modern technology and terminology. The board shall formulate a plan for consolidating and reorganizing existing state agencies having responsibilities in the field of public health to eliminate any needless duplication in services which may be found to exist. In carrying out the provisions of this section, the State Board of Health shall cooperate with and may utilize the services, facilities and personnel of any department or agency of the state, any private citizen task force and the committees on public health of both houses of the Legislature. The State Board of Health is authorized to apply for and expend funds made available to it by grant from any source in order to perform its responsibilities under this section.

HISTORY:

Laws, 1980, ch. 465, § 4; reenacted without change, 1982, ch. 494, § 5; reenacted, Laws, 1990, ch. 568, § 5; reenacted without change, Laws, 1994, ch. 462, § 5; reenacted, Laws, 1995, ch. 363, § 5; reenacted without change, Laws, 2001, ch. 420, § 5; reenacted without change, Laws, 2007, ch. 514, § 6; reenacted without change, Laws, 2010, ch. 505, § 5; reenacted without change, Laws, 2014, ch. 352, § 5; reenacted without change, Laws, 2017, ch. 374, § 5, eff from and after July 1, 2017.

Editor's Notes —

For repeal date of this section, see § 41-3-20.

Laws of 2007, ch. 514, § 22 provides as follows:

"SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act." Laws of 2007, ch. 514 was approved on March 30, 2007.

Laws of 2010, ch. 556, § 1, provides:

"SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

"Section 18. This act shall take effect and be in force from and after May 1, 2010."

Amendment Notes —

The 2017 amendment reenacted the section without change.

§ 41-3-7. Repealed.

Repealed by Laws 1982, ch. 494, § 16, eff from and after July 1, 1982.

[Codes, 1892, § 2279; 1906, §§ 2485, 2497; Hemingway's 1917, §§ 4834, 4846; 1930, §§ 4871, 4883; 1942, §§ 7027, 7039; Laws, 1896, ch. 68; Laws, 1898, p. 93; Laws, 1976, ch. 388; Laws, 1980, ch. 458, § 4]

Editor's Notes —

Former § 41-3-7 authorized the establishment of a state board of medical licensure executive committee.

§§ 41-3-9 and 41-3-11. Repealed.

Repealed by Laws, 1980, ch. 465, § 6, eff from and after July 1, 1980.

§ 41-3-9. [Laws, 1960, ch. 351, § 1; Laws, 1966, 456, § 1]

§ 41-3-11. [Codes 1892, § 2270; 1906, § 2486; Hemingway's 1917, § 4835; 1930, § 4872; 1942, § 7028]

Editor's Notes —

Former § 41-3-9 required the Governor to appoint a milk advisory committee to advise with the State Board of Health on regulations for the production, handling and processing of milk and milk products.

Former § 41-3-11 related to meetings of the State Board of Health.

§ 41-3-13. Findings; WISEWOMAN and WISEMAN pilot programs established to reduce the incidences of certain chronic diseases among Mississippians through education, prevention and early screening and detection.

(1) The Legislature makes the following findings:

(a) Chronic diseases are among the most prevalent, costly and preventable of all health problems.

(b) Screening tests are currently available that can detect heart disease, breast cancer, cervical cancer, colorectal cancer, prostate cancer and other chronic diseases early, when they can be most effectively treated, managed or controlled.

(c) The risk factors for many chronic diseases can be addressed and reduced through education about those risk factors and the importance of actions that can be taken for prevention of chronic diseases.

(d) People should partner with their health care providers to have their risk factors assessed, monitored and managed in accordance with national guidelines, and should be educated about the signs and symptoms of heart attack and stroke and the importance of getting help quickly at the onset of those symptoms.

(e) Mississippi should have programs that are specifically designed to reduce the incidences of chronic diseases among our population.

(2) The State Department of Health is authorized in its discretion to establish the WISEWOMAN pilot program and the WISEMAN pilot program, the purposes and goals of which are to reduce the incidences of certain chronic diseases among Mississippians through education, prevention and early screening and detection. The pilot program shall be conditioned upon the availability of funds obtained for such purpose from public or private sources. The focus of the WISEWOMAN pilot program shall be heart disease, stroke, breast cancer, cervical cancer and colorectal cancer in women, and the focus of the WISEMAN pilot program shall be heart disease, stroke, prostate cancer, colorectal cancer and diabetes in men. At a minimum, the WISEWOMAN and WISEMAN pilot programs shall:

(a) Provide for education about healthy behaviors and how to reduce the risk factors for those chronic diseases;

(b) Provide for screening and testing to detect those chronic diseases early when they can be effectively treated, managed or controlled; and

(c) Be directed toward those populations at greatest need and be based on a foundation of scientific evidence.

(3) In implementing the WISEWOMAN and WISEMAN pilot programs, the department shall contract with public or private clinics or agencies that have demonstrated success in reducing incidences of those chronic diseases through education, prevention and early screening and detection.

(4) The department shall seek and apply for grants from the Centers for Disease Control and Prevention and other public or private entities to obtain funding for the WISEWOMAN and WISEMAN pilot programs.

HISTORY:

Laws, 2010, ch. 505, § 14, eff from and after May 1, 2010. See Editor's Note.

Editor's Notes —

This section was added by Laws of 2010, ch. 505, effective from and after July 1, 2010. The effective date of Laws of 2010, ch. 505, was subsequently amended by Laws of 2010, ch. 556, § 1, which provides:

"SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

"Section 18. This act shall take effect and be in force from and after May 1, 2010."

A former § 41-3-13 [Codes, 1892, §§ 2282-2284; 1906, §§ 2506-2508; Hemingway's 1917, §§ 4855-4857; 1930, §§ 4892-4894; 1942, §§ 7048-7050; Laws, 1960, ch. 351, §§ 2, 3], which related to the compensation and expenses of members of the State Board of Health and the milk advisory committee and provided for the method of payment, was repealed by Laws of 1980, ch. 465, § 6, effective from and after July 1, 1980.

Laws of 2011, ch. 543, § 1, effective April 26, 2011, provides:

"SECTION 1. (1) There is created an advisory committee to study and provide recommendations to the Legislature regarding the areas of this state that are underserved in the retail availability of fresh fruits and vegetables and other healthy foods and the impact of the limited retail availability of such foods on proper nutrition and on obesity and related chronic illnesses, including heart attacks and diabetes.

"(2) The advisory committee shall consist of the following fifteen (15) members:

"(a) The State Health Officer, or his designee;

"(b) The Executive Director of the Division of Medicaid, or his designee;

"(c) One (1) person who is a member of a county board of supervisors, to be appointed by the Lieutenant Governor;

"(d) One (1) person who is a mayor of a municipality, to be appointed by the Speaker of the House of Representatives;

"(e) The Commissioner of Agriculture and Commerce, or his designee;

"(f) The Executive Director of the Department of Human Services, or his designee;

"(g) The Chairman of the House Public Health and Human Services Committee;

"(h) The Chairman of the Senate Public Health and Welfare Committee;

"(i) The Chairman of the House Agriculture Committee;

"(j) The Chairman of the Senate Agriculture Committee;

"(k) Two (2) other members of the House of Representatives, to be appointed by the Speaker of the House of Representatives;

"(*l*) Two (2) other members of the Senate, to be appointed by the Lieutenant Governor; and

"(m) A registered dietitian or nutritionist, appointed by the Governor.

"(3) In appointing members of the advisory committee, an appointing authority shall ensure that the members reflect the diversity of this state, with members representing:

"(a) Rural areas;

"(b) Urban areas; and

"(c) Different geographical regions of the state.

"(4) An advisory committee member is not entitled to reimbursement of expenses or to compensation.

"(5) The advisory committee shall meet not later than sixty (60) days after the effective date of this act and shall select a chairman. The committee shall meet regularly as necessary at the call of the chairman.

"(6) The advisory committee shall:

"(a) Investigate the retail availability of fresh fruits and vegetables and other healthy foods in this state;

"(b) Develop recommendations for creating and a plan for implementing a statewide financing program to bring fresh food retailers into areas of this state that are underserved in regard to the retail availability of fresh fruits and vegetables and other healthy foods; and

"(c) Perform other advisory duties regarding the availability of fresh fruits and vegetables and other healthy foods in this state.

"(7) The advisory committee shall submit a report to the Legislature not later than December 1, 2011, providing information relating to:

"(a) The costs, benefits, and feasibility of a statewide financing program to bring fresh food retailers into areas of this state that are underserved in regard to the retail availability of fresh fruits and vegetables and other healthy foods; and

"(b) A plan for implementing the program.

"(8) To effectuate the work of the advisory committee, any department, division, board, bureau, commission or agency of the state or of any political subdivision thereof, at the request of the chair of the committee, shall provide to the committee the facilities, staff assistance and data as will enable it to properly carry out its task.

"(9) The advisory committee shall be dissolved upon the presentation of its report to the Legislature."

§ 41-3-15. General powers, duties and authority of State Board of Health; certain specific powers of State Department of Health; general powers and duties of executive director; establishment of office of rural health [Repealed effective July 1, 2020; Repealed effective July 1, 2021; see Editor's note].

(1)(a) There shall be a State Department of Health.

(b) The State Board of Health shall have the following powers and duties:

(i) To formulate the policy of the State Department of Health regarding public health matters within the jurisdiction of the department;

(ii) To adopt, modify, repeal and promulgate, after due notice and hearing, and enforce rules and regulations implementing or effectuating the powers and duties of the department under any and all statutes within the department's jurisdiction, and as the board may deem necessary;

(iii) To apply for, receive, accept and expend any federal or state funds or contributions, gifts, trusts, devises, bequests, grants, endowments or funds from any other source or transfers of property of any kind;

(iv) To enter into, and to authorize the executive officer to execute contracts, grants and cooperative agreements with any federal or state agency or subdivision thereof, or any public or private institution located inside or outside the State of Mississippi, or any person, corporation or association in connection with carrying out the provisions of this chapter, if it finds those actions to be in the public interest and the contracts or agreements do not have a financial cost that exceeds the amounts appropriated for those purposes by the Legislature;

(v) To appoint, upon recommendation of the Executive Officer of the State Department of Health, a Director of Internal Audit who shall be either a Certified Public Accountant or Certified Internal Auditor, and whose employment shall be continued at the discretion of the board, and who shall report directly to the board, or its designee; and

(vi) To discharge such other duties, responsibilities and powers as are necessary to implement the provisions of this chapter.

(c) The Executive Officer of the State Department of Health shall have the following powers and duties:

(i) To administer the policies of the State Board of Health within the authority granted by the board;

(ii) To supervise and direct all administrative and technical activities of the department, except that the department's internal auditor shall be subject to the sole supervision and direction of the board;

(iii) To organize the administrative units of the department in accordance with the plan adopted by the board and, with board approval, alter the organizational plan and reassign responsibilities as he or she may deem necessary to carry out the policies of the board;

(iv) To coordinate the activities of the various offices of the department;

(v) To employ, subject to regulations of the State Personnel Board, qualified professional personnel in the subject matter or fields of each office, and such other technical and clerical staff as may be required for the operation of the department. The executive officer shall be the appointing authority for the department, and shall have the power to delegate the authority to appoint or dismiss employees to appropriate subordinates, subject to the rules and regulations of the State Personnel Board;

(vi) To recommend to the board such studies and investigations as he or she may deem appropriate, and to carry out the approved recommendations in conjunction with the various offices;

(vii) To prepare and deliver to the Legislature and the Governor on or before January 1 of each year, and at such other times as may be required by the Legislature or Governor, a full report of the work of the department and the offices thereof, including a detailed statement of expenditures of the department and any recommendations the board may have;

(viii) To prepare and deliver to the Chairmen of the Public Health and Welfare/Human Services Committees of the Senate and House on or before January 1 of each year, a plan for monitoring infant mortality in Mississippi and a full report of the work of the department on reducing Mississippi's infant mortality and morbidity rates and improving the status of maternal and infant health; and

(ix) To enter into contracts, grants and cooperative agreements with any federal or state agency or subdivision thereof, or any public or private institution located inside or outside the State of Mississippi, or any person, corporation or association in connection with carrying out the provisions of this chapter, if he or she finds those actions to be in the public interest and the contracts or agreements do not have a financial cost that exceeds the amounts appropriated for those purposes by the Legislature. Each contract or agreement entered into by the executive officer shall be submitted to the board before its next meeting.

(2) The State Board of Health shall have the authority to establish an Office of Rural Health within the department. The duties and responsibilities of this office shall include the following:

(a) To collect and evaluate data on rural health conditions and needs;

(b) To engage in policy analysis, policy development and economic impact studies with regard to rural health issues;

(c) To develop and implement plans and provide technical assistance to enable community health systems to respond to various changes in their circumstances;

(d) To plan and assist in professional recruitment and retention of medical professionals and assistants; and

(e) To establish information clearinghouses to improve access to and sharing of rural health care information.

(3) The State Board of Health shall have general supervision of the health interests of the people of the state and to exercise the rights, powers and duties of those acts which it is authorized by law to enforce.

(4) The State Board of Health shall have authority:

(a) To make investigations and inquiries with respect to the causes of disease and death, and to investigate the effect of environment, including conditions of employment and other conditions that may affect health, and to make such other investigations as it may deem necessary for the preservation and improvement of health.

(b) To make such sanitary investigations as it may, from time to time, deem necessary for the protection and improvement of health and to investigate nuisance questions that affect the security of life and health within the state.

(c) To direct and control sanitary and quarantine measures for dealing with all diseases within the state possible to suppress same and prevent their spread.

(d) To obtain, collect and preserve such information relative to mortality, morbidity, disease and health as may be useful in the discharge of its duties or may contribute to the prevention of disease or the promotion of health in this state.

(e) To charge and collect reasonable fees for health services, including immunizations, inspections and related activities, and the board shall charge fees for those services; however, if it is determined that a person receiving services is unable to pay the total fee, the board shall collect any amount that the person is able to pay. Any increase in the fees charged by the board under this paragraph shall be in accordance with the provisions of Section 41-3-65.

(f)(i) To establish standards for, issue permits and exercise control over, any cafes, restaurants, food or drink stands, sandwich manufacturing establishments, and all other establishments, other than churches, church-related and private schools, and other nonprofit or charitable organizations, where food or drink is regularly prepared, handled and served for pay; and

(ii) To require that a permit be obtained from the Department of Health before those persons begin operation. If any such person fails to obtain the permit required in this subparagraph (ii), the State Board of Health, after due notice and opportunity for a hearing, may impose a monetary penalty not to exceed One Thousand Dollars ($1,000.00) for each violation. However, the department is not authorized to impose a monetary penalty against any person whose gross annual prepared food sales are less than Five Thousand Dollars ($5,000.00). Money collected by the board under this subparagraph (ii) shall be deposited to the credit of the State General Fund of the State Treasury.

(g) To promulgate rules and regulations and exercise control over the production and sale of milk pursuant to the provisions of Sections 75-31-41 through 75-31-49.

(h) On presentation of proper authority, to enter into and inspect any public place or building where the State Health Officer or his representative deems it necessary and proper to enter for the discovery and suppression of disease and for the enforcement of any health or sanitary laws and regulations in the state.

(i) To conduct investigations, inquiries and hearings, and to issue subpoenas for the attendance of witnesses and the production of books and records at any hearing when authorized and required by statute to be conducted by the State Health Officer or the State Board of Health.

(j) To promulgate rules and regulations, and to collect data and information, on (i) the delivery of services through the practice of telemedicine; and (ii) the use of electronic records for the delivery of telemedicine services.

(k) To enforce and regulate domestic and imported fish as authorized under Section 69-7-601 et seq.

(5)(a) The State Board of Health shall have the authority, in its discretion, to establish programs to promote the public health, to be administered by the State Department of Health. Specifically, those programs may include, but shall not be limited to, programs in the following areas:

(i) Maternal and child health;

(ii) Family planning;

(iii) Pediatric services;

(iv) Services to crippled and disabled children;

(v) Control of communicable and noncommunicable disease;

(vi) Chronic disease;

(vii) Accidental deaths and injuries;

(viii) Child care licensure;

(ix) Radiological health;

(x) Dental health;

(xi) Milk sanitation;

(xii) Occupational safety and health;

(xiii) Food, vector control and general sanitation;

(xiv) Protection of drinking water;

(xv) Sanitation in food handling establishments open to the public;

(xvi) Registration of births and deaths and other vital events;

(xvii) Such public health programs and services as may be assigned to the State Board of Health by the Legislature or by executive order; and

(xviii) Regulation of domestic and imported fish for human consumption.

(b) The State Board of Health and State Department of Health shall not be authorized to sell, transfer, alienate or otherwise dispose of any of the home health agencies owned and operated by the department on January 1, 1995, and shall not be authorized to sell, transfer, assign, alienate or otherwise dispose of the license of any of those home health agencies, except upon the specific authorization of the Legislature by an amendment to this section. However, this paragraph (b) shall not prevent the board or the department from closing or terminating the operation of any home health agency owned and operated by the department, or closing or terminating any office, branch office or clinic of any such home health agency, or otherwise discontinuing the providing of home health services through any such home health agency, office, branch office or clinic, if the board first demonstrates that there are other providers of home health services in the area being served by the department's home health agency, office, branch office or clinic that will be able to provide adequate home health services to the residents of the area if the department's home health agency, office, branch office or clinic is closed or otherwise discontinues the providing of home health services. This demonstration by the board that there are other providers of adequate home health services in the area shall be spread at length upon the minutes of the board at a regular or special meeting of the board at least thirty (30) days before a home health agency, office, branch office or clinic is proposed to be closed or otherwise discontinue the providing of home health services.

(c) The State Department of Health may undertake such technical programs and activities as may be required for the support and operation of those programs, including maintaining physical, chemical, bacteriological and radiological laboratories, and may make such diagnostic tests for diseases and tests for the evaluation of health hazards as may be deemed necessary for the protection of the people of the state.

(6)(a) The State Board of Health shall administer the local governments and rural water systems improvements loan program in accordance with the provisions of Section 41-3-16.

(b) The State Board of Health shall have authority:

(i) To enter into capitalization grant agreements with the United States Environmental Protection Agency, or any successor agency thereto;

(ii) To accept capitalization grant awards made under the federal Safe Drinking Water Act, as amended;

(iii) To provide annual reports and audits to the United States Environmental Protection Agency, as may be required by federal capitalization grant agreements; and

(iv) To establish and collect fees to defray the reasonable costs of administering the revolving fund or emergency fund if the State Board of Health determines that those costs will exceed the limitations established in the federal Safe Drinking Water Act, as amended. The administration fees may be included in loan amounts to loan recipients for the purpose of facilitating payment to the board; however, those fees may not exceed five percent (5%) of the loan amount.

(7) Notwithstanding any other provision to the contrary, the State Department of Health shall have the following specific powers: The department shall issue a license to Alexander Milne Home for Women, Inc., a 501(c) (3) nonprofit corporation, for the construction, conversion, expansion and operation of not more than forty-five (45) beds for developmentally disabled adults who have been displaced from New Orleans, Louisiana, with the beds to be located in a certified ICF-MR facility in the City of Laurel, Mississippi. There shall be no prohibition or restrictions on participation in the Medicaid program for the person receiving the license under this subsection (7). The license described in this subsection shall expire five (5) years from the date of its issue.

The license authorized by this subsection shall be issued upon the initial payment by the licensee of an application fee of Sixty-seven Thousand Dollars ($67,000.00) and a monthly fee of Sixty-seven Thousand Dollars ($67,000.00) after the issuance of the license, to be paid as long as the licensee continues to operate. The initial and monthly licensing fees shall be deposited by the State Department of Health into the special fund created under Section 41-7-188.

(8) Notwithstanding any other provision to the contrary, the State Department of Health shall have the following specific powers: The State Department of Health is authorized to issue a license to an existing home health agency for the transfer of a county from that agency to another existing home health agency, and to charge a fee for reviewing and making a determination on the application for such transfer not to exceed one-half (½) of the authorized fee assessed for the original application for the home health agency, with the revenue to be deposited by the State Department of Health into the special fund created under Section 41-7-188.

(9) Notwithstanding any other provision to the contrary, the State Department of Health shall have the following specific powers: For the period beginning July 1, 2010, through July 1, 2017, the State Department of Health is authorized and empowered to assess a fee in addition to the fee prescribed in Section 41-7-188 for reviewing applications for certificates of need in an amount not to exceed twenty-five one-hundredths of one percent (.25 of 1%) of the amount of a proposed capital expenditure, but shall be not less than Two Hundred Fifty Dollars ($250.00) regardless of the amount of the proposed capital expenditure, and the maximum additional fee permitted shall not exceed Fifty Thousand Dollars ($50,000.00). Provided that the total assessments of fees for certificate of need applications under Section 41-7-188 and this section shall not exceed the actual cost of operating the certificate of need program.

(10) Notwithstanding any other provision to the contrary, the State Department of Health shall have the following specific powers: The State Department of Health is authorized to extend and renew any certificate of need that has expired, and to charge a fee for reviewing and making a determination on the application for such action not to exceed one-half (½) of the authorized fee assessed for the original application for the certificate of need, with the revenue to be deposited by the State Department of Health into the special fund created under Section 41-7-188.

(11) Notwithstanding any other provision to the contrary, the State Department of Health shall have the following specific powers: The State Department of Health is authorized and empowered, to revoke, immediately, the license and require closure of any institution for the aged or infirm, including any other remedy less than closure to protect the health and safety of the residents of said institution or the health and safety of the general public.

(12) Notwithstanding any other provision to the contrary, the State Department of Health shall have the following specific powers: The State Department of Health is authorized and empowered, to require the temporary

detainment of individuals for disease control purposes based upon violation of any order of the State Health Officer, as provided in Section 41-23-5. For the purpose of enforcing such orders of the State Health Officer, persons employed by the department as investigators shall have general arrest powers. All law enforcement officers are authorized and directed to assist in the enforcement of such orders of the State Health Officer.

HISTORY:

Codes, 1892, § 2271; 1906, § 2487; Hemingway's 1917, § 4836; 1930, § 4873; 1942, § 7029; Laws, 1968, ch. 441, § 2; Laws, 1971, ch. 378, § 1; reenacted and amended, Laws, 1982, ch. 494, § 6; Laws, 1983, ch. 522, § 1; Laws, 1986, ch. 371, § 1; Laws, 1986, ch. 500, § 22; Laws, 1987, ch. 512, § 5; Laws, 1988, ch. 395, § 4; Laws, 1988, ch. 573; reenacted and amended, Laws, 1990, ch. 568, § 6; Laws, 1992, ch. 495, § 1; reenacted and amended, Laws, 1994, ch. 462, § 6; reenacted and amended, Laws, 1995, ch. 363, § 6; Laws, 1995, ch. 521, § 21; Laws, 1997, ch. 523, § 2; Laws, 1998, ch. 332, § 1; reenacted without change, Laws, 2001, ch. 420, § 6; Laws, 2002, ch. 506, § 8; Laws, 2006, ch. 489, § 1; Laws, 2007, ch. 342, § 1; reenacted and amended, Laws, 2007, ch. 514, § 7; reenacted and amended, Laws, 2010, ch. 505, § 6; reenacted and amended, Laws, 2014, ch. 352, § 6; Laws, 2016, ch. 510, § 3, eff from and after July 1, 2016.

Joint Legislative Committee Note —

Section 1 of ch. 342, Laws of 2007, effective July 1, 2007 (approved March 14, 2007), amended this section. Section 7 of ch. 514, Laws of 2007, effective June 30, 2007 (approved March 30, 2007), also amended this section. As set out above, this section reflects the language of Section 7 of ch. 514, Laws of 2007, which contains language that specifically provides that it supersedes § 41-3-15 as amended by Laws of 2007, ch. 342.

Editor's Notes —

This section was amended by § 3 of Chapter 510 (HB 289), Laws of 2016, and was subject to the repealer contained in § 65 of that act, effective July 1, 2020. The section is also included within the span of sections repealed by § 41-3-20, which was amended by Chapter 374, Laws of 2017, to extend the date of the repealer to July 1, 2021. The section is subject to both repealers.

Sections 75-31-41 through 75-31-49, referred to in (4)(g), were repealed by Laws of 1999, ch. 439, § 2, eff from and after July 1, 1999.

Laws of 2007, ch. 514, § 22 provides as follows:

"SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act." Laws of 2007, ch. 514 was approved on March 30, 2007.

This section was reenacted and amended by Laws of 2010, ch. 505, § 6, effective from and after July 1, 2010. The effective date of Laws of 2010, ch. 505, was subsequently amended by Laws of 2010, ch. 556, § 1, which provides:

"SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

"Section 18. This act shall take effect and be in force from and after May 1, 2010."

Laws of 2010, ch. 505, § 17, provides:

"SECTION 17. (1) The State Board of Health shall develop and make a report to the Public Health and Welfare Committees of the Senate and House of Representatives prior to the 2011 Regular Session of the Legislature with any necessary legislative recommendations on the following:

"(a) The definitions and standards relating to the licensure of 'personal care home,' 'assisted living facilities,' 'adult day care facilities' and 'psychiatric supervised housing facility' for the purposes of licensure purposes for institutions for the aged or infirm;

"(b) A determination as to whether the rules, regulations and standards adopted by the State Board of Health for personal care homes should be uniform for each of the classifications of personal care homes, but may vary based on the differences between the types of facilities in each classification.

"(2) Nothing in this section shall prohibit the State Board of Health from promulgating and implementing necessary rules and regulations."

Laws of 2011, ch. 543, § 1, effective April 26, 2011, provides:

"SECTION 1. (1) There is created an advisory committee to study and provide recommendations to the Legislature regarding the areas of this state that are underserved in the retail availability of fresh fruits and vegetables and other healthy foods and the impact of the limited retail availability of such foods on proper nutrition and on obesity and related chronic illnesses, including heart attacks and diabetes.

"(2) The advisory committee shall consist of the following fifteen (15) members:

"(a) The State Health Officer, or his designee;

"(b) The Executive Director of the Division of Medicaid, or his designee;

"(c) One (1) person who is a member of a county board of supervisors, to be appointed by the Lieutenant Governor;

"(d) One (1) person who is a mayor of a municipality, to be appointed by the Speaker of the House of Representatives;

"(e) The Commissioner of Agriculture and Commerce, or his designee;

"(f) The Executive Director of the Department of Human Services, or his designee;

"(g) The Chairman of the House Public Health and Human Services Committee;

"(h) The Chairman of the Senate Public Health and Welfare Committee;

"(i) The Chairman of the House Agriculture Committee;

"(j) The Chairman of the Senate Agriculture Committee;

"(k) Two (2) other members of the House of Representatives, to be appointed by the Speaker of the House of Representatives;

"(*l*) Two (2) other members of the Senate, to be appointed by the Lieutenant Governor; and

"(m) A registered dietitian or nutritionist, appointed by the Governor.

"(3) In appointing members of the advisory committee, an appointing authority shall ensure that the members reflect the diversity of this state, with members representing:

"(a) Rural areas;

"(b) Urban areas; and

"(c) Different geographical regions of the state.

"(4) An advisory committee member is not entitled to reimbursement of expenses or to compensation.

"(5) The advisory committee shall meet not later than sixty (60) days after the effective date of this act and shall select a chairman. The committee shall meet regularly as necessary at the call of the chairman.

"(6) The advisory committee shall:

"(a) Investigate the retail availability of fresh fruits and vegetables and other healthy foods in this state;

"(b) Develop recommendations for creating and a plan for implementing a statewide financing program to bring fresh food retailers into areas of this state that are underserved in regard to the retail availability of fresh fruits and vegetables and other healthy foods; and

"(c) Perform other advisory duties regarding the availability of fresh fruits and vegetables and other healthy foods in this state.

"(7) The advisory committee shall submit a report to the Legislature not later than December 1, 2011, providing information relating to:

"(a) The costs, benefits, and feasibility of a statewide financing program to bring fresh food retailers into areas of this state that are underserved in regard to the retail availability of fresh fruits and vegetables and other healthy foods; and

"(b) A plan for implementing the program.

"(8) To effectuate the work of the advisory committee, any department, division, board, bureau, commission or agency of the state or of any political subdivision thereof, at the request of the chair of the committee, shall provide to the committee the facilities, staff assistance and data as will enable it to properly carry out its task.

"(9) The advisory committee shall be dissolved upon the presentation of its report to the Legislature."

Laws of 2016, ch. 510, § 65 provides:

"SECTION 65. This act shall stand repealed on July 1, 2020."

Laws of 2018, ch. 400, § 1, effective March 19, 2018, provides:

"SECTION 1: The Legislature finds and declares:

"(a) A rare disease is defined as a disease that affects fewer than two hundred thousand (200,000) people in the United States. Rare diseases are sometimes called orphan diseases. There are seven thousand (7,000) known rare diseases affecting approximately thirty million (30,000,000) men, women and children in the United States;

"(b) The exact cause for many rare diseases remains unknown. However, eighty percent (80%) of rare diseases are genetic in origin and can be linked to mutations in a single gene or in multiple genes. Those diseases are referred to as genetic diseases. Genetic disease can be passed down from generation to generation, explaining why certain rare diseases run in families. It is also estimated that about half of all rare diseases affect children;

"(c) A person suffering with a rare disease in Mississippi faces a wide range of challenges, including, but not limited to: delays in obtaining a diagnosis; misdiagnosis; shortage of medical specialists who are familiar with, and can provide treatment for, rare diseases; prohibitive cost of treatment; and the inability to access therapies and medication that are used by doctors to treat rare diseases but have not been approved by the federal Food and Drug Administration (FDA) for that specific purpose;

"(d) In recent years, researchers have made considerable progress in developing diagnostic tools and treatment protocols for, and in discovering ways to prevent a variety of, rare diseases. However, much more remains to be done in the areas of rare disease research and the search for and development of new therapeutics; and

"(e) It would be very beneficial to persons in Mississippi with rare diseases and to researchers who are trying to find ways to treat or prevent the occurrence of rare diseases to examine the existing data on rare diseases in Mississippi and compile it in a detailed report, which then could be analyzed and used to educate medical professionals, government agencies and the public about rare diseases as an important public health issue, and to encourage and fund research in the development of new treatments for rare diseases."

Laws of 2018, ch. 400, § 2, effective March 19, 2018, provides:

"SECTION 2. The University of Mississippi Medical Center (UMMC) as the lead agency, together with the State Department of Health, the Division of Medicaid and the Mississippi Health Information Network (MS-HIN), shall cooperate with each other in preparing a comprehensive report on the state of rare diseases in Mississippi, including the incidence of rare diseases in the state, the status of the rare disease community, and treatment and services provided to persons with rare diseases in the state. The State Department of Health, the Division of Medicaid and the MS-HIN shall provide to UMMC and each other all claims data and patient encounter data relating to the diagnosis and treatment of rare diseases and all related research and documentation relating to rare diseases, which shall be compiled, examined and analyzed in the report. The report shall be presented to the Chairs of the House Public Health and Human Services Committee, Senate Public Health and Welfare Committee, and the House and Senate Medicaid Committees not later than December 1, 2019."

Cross References —

Implied waiver of the medical privilege of patients regarding the release of medical information required to be reported by this section, see § 13-1-21.

Duties in connection with solid waste disposal pursuant to joint agreements between counties and municipalities, see §§ 17-17-1 et seq.

Powers and duties of the state board of health with regard to the Municipal and Domestic Water and Wastewater System Operator's Certification Act of 1986, see § 21-27-207.

State Administrative Procedures Law, see §§ 25-43-1.101 et seq.

Power of state board of health to require physical examinations of school employees, see § 37-11-17.

County health officer, see § 41-3-37.

County departments of health, see §§ 41-3-43, 41-3-45, 41-3-49 through 41-3-53.

Municipal health boards, see § 41-3-57.

Provision that, for purposes of §§ 41-7-171 et seq., "State Department of Health" shall mean the state agency created under this section, which shall be considered to be the State Health Planning and Development Agency, see § 41-7-173.

Role of State Department of Health in granting of certificate of need required to be obtained by certain health care service providers, see § 41-7-191.

Provision making hospital records the property of the hospital subject to access by health officials in the discharge of their duties pursuant to this section, see § 41-9-65.

Disinfection and sanitation of buildings, see §§ 41-25-1 et seq.

Promulgation of Primary Drinking Water Regulations by state board of health, see § 41-26-5.

Bureau of drug enforcement under Uniform Controlled Substances Law, see §§ 41-29-101 et seq.

Regulation of hotels and innkeepers by state board of health, see §§ 41-49-1 et seq.

Animal and poultry byproducts disposal or rendering plants, see §§ 41-51-1 et seq.

Rabies inoculation of dogs and cats, see §§ 41-53-1 et seq.

Establishment and administration of program of emergency medical services, see § 41-59-5.

Powers and duties of the state board of health to administer disbursements from the emergency medical services operating fund, see §§ 41-59-5 and 41-59-61.

Role of State Department of Health in regulating onsite wastewater disposal systems, see §§ 41-67-3 et seq.

Duties of department with respect to Mississippi Hospice Law of 1990, see § 41-85-7.

State Department of Health to provide administrative support for the Child Death Review Panel, see § 41-111-1.

Regulation of institutions for aged and infirm, see §§ 43-11-1 et seq.

Designation of state board of health as agency to administer state-wide radiation protection program, see § 45-14-7.

Powers and duties of the board with regard to transportation of radioactive waste, see §§ 45-14-51 et seq.

Health and safety regulations for rock festivals, see § 45-21-11.

Powers and duties of the board under the Mississippi Boiler and Pressure Vessel Safety Law of 1974, see §§ 45-23-1 et seq.

Authorization for State Board of Health to limit sale of oysters for human consumption, see § 49-15-15.

Membership on board of directors of Pearl River Valley Water Supply District, see § 51-9-107.

Assistance by State Board of Health in making relevant information available to Cooperative Extension Service for information clearinghouse assisting farmers, see § 69-2-5.

Sanitary regulations for barber shops, see § 73-5-7.

Review by State Board of Health of rules and regulations relating to sanitation promulgated by state board of cosmetology, see § 73-7-7.

Powers and duties of the State Board of Health with respect to the Mississippi Occupational Therapy Practice Act, see § 73-24-1 et seq.

Powers and duties of state board with regard to restrictions on license to practice of physicians under disabled physician law, see §§ 73-25-51 et seq.

Duties of the board of health with respect to anhydrous ammonia storage facilities, see § 75-57-31.

Duties of state board of health under Mississippi Youth Camp Safety and Health Law, see §§ 75-74-1 et seq.

Regulation of nonprofit dental service associations, see §§ 83-43-1 et seq.

Federal Aspects—

Federal Safe Drinking Water Act, see 42 USCS §§ 300f et seq.

JUDICIAL DECISIONS

ANALYSIS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use].

II. Under Former § 41-3-21.

6. Constitutionality.

I. Under Current Law.

1. In general.

Mississippi Board of Health Regulation, excluding milk from another state unless such other state accepted Mississippi milk on a reciprocal basis, unduly burdened interstate commerce and could not be justified either as a permissible exercise of state power in maintaining health standards, particularly since such milk was excluded regardless of whether it met health standards, or as a free trade provision promoting trade between the states. Great Atlantic & Pacific Tea Co. v. Cottrell, 424 U.S. 366, 96 S. Ct. 923, 47 L. Ed. 2d 55, 1976 U.S. LEXIS 91 (U.S. 1976).

Contents of the records of the director of the state hygienic laboratory as to the result of a blood test were admissible in a suit for damages for negligent burns of X-ray machine where it was not shown that proffered evidence pertained to a blood specimen of plaintiff. Unger v. Grimsley, 138 Miss. 591, 103 So. 341, 1925 Miss. LEXIS 68 (Miss. 1925).

The law creating the state board of health held to be constitutional under the police power of the state. Hawkins v. Hoye, 108 Miss. 282, 66 So. 741, 1914 Miss. LEXIS 201 (Miss. 1914).

An ordinance of the board of health requiring that milk cows used in the dairy business be examined is valid; it does not violate either the federal or state constitution. Hawkins v. Hoye, 108 Miss. 282, 66 So. 741, 1914 Miss. LEXIS 201 (Miss. 1914).

2.-5. [Reserved for future use].

II. Under Former § 41-3-21.

6. Constitutionality.

A case holding that this section [Code 1942, § 7032] as it appeared as Hemingway Code 1927, § 5517 with reference to removal of county health officer without notice or cause was unconstitutional. Mississippi State Board of Health v. Matthews, 113 Miss. 510, 74 So. 417, 1917 Miss. LEXIS 128 (Miss. 1917).

The county health officer is a public officer and cannot be removed by the state board of health without cause, notice or hearing. Ware v. State, 111 Miss. 599, 71 So. 868, 1916 Miss. LEXIS 345 (Miss. 1916).

OPINIONS OF THE ATTORNEY GENERAL

Based on the requirement set forth in Section 41-67-23 that the Department of Health inspect wastewater systems at the behest of the property owner, or his lender, coupled with the authority to charge and collect reasonable fees for health services as set out in Section 41-3-15(4)(f), the Department of Health may recoup actual costs associated with its obligations imposed in Section 41-67-23. 1995 Miss. Op. Att'y Gen. 240.

RESEARCH REFERENCES

ALR.

Liability for retaliation against at-will employee for public complaints or efforts relating to health or safety. 75 A.L.R.4th 13.

Propriety of prophylactic availability programs. 52 A.L.R.5th 477.

Am. Jur.

39 Am. Jur. 2d, Health §§ 1 et seq.

CJS.

39A C.J.S., Health and Environment §§ 20 et seq.

§ 41-3-16. Local governments and rural water systems improvements revolving loan and grant program [Repealed effective July 1, 2021].

(1)(a) There is established a local governments and rural water systems improvements revolving loan and grant program to be administered by the State Department of Health, referred to in this section as "department," for the purpose of assisting counties, incorporated municipalities, districts or other water organizations that have been granted tax-exempt status under either federal or state law, in making improvements to their water systems, including construction of new water systems or expansion or repair of existing water systems. Loan and grant proceeds may be used by the recipient for planning, professional services, acquisition of interests in land, acquisition of personal property, construction, construction-related services, maintenance, and any other reasonable use which the board, in its discretion, may allow. For purposes of this section, "water systems" has the same meaning as the term "public water system" under Section 41-26-3.

(b)(i) There is created a board to be known as the "Local Governments and Rural Water Systems Improvements Board," referred to in this section as "board," to be composed of the following nine (9) members: the State Health Officer, or his designee, who shall serve as chairman of the board; the Executive Director of the Mississippi Development Authority, or his designee; the Executive Director of the Department of Environmental Quality, or his designee; the Executive Director of the Department of Finance and Administration, or his designee; the Executive Director of the Mississippi Association of Supervisors, or his designee; the Executive Director of the Mississippi Municipal League, or his designee; the Executive Director of the American Council of Engineering Companies of Mississippi, or his designee; the State Director of the United States Department of Agriculture, Rural Development, or his designee; and a manager of a rural water system.

The Governor shall appoint a manager of a rural water system from a list of candidates provided by the Executive Director of the Mississippi Rural Water Association. The Executive Director of the Mississippi Rural Water Association shall provide the Governor a list of candidates which shall contain a minimum of three (3) candidates for each appointment.

(ii) Nonappointed members of the board may designate another representative of their agency or association to serve as an alternate.

(iii) The gubernatorial appointee shall serve a term concurrent with the term of the Governor and until a successor is appointed and qualified.

No member, officer or employee of the Board of Directors of the Mississippi Rural Water Association shall be eligible for appointment.

(c) The department, if requested by the board, shall furnish the board with facilities and staff as needed to administer this section. The department may contract, upon approval by the board, for those facilities and staff needed to administer this section, including routine management, as it deems necessary. The board may advertise for or solicit proposals from public or private sources, or both, for administration of this section or any services required for administration of this section or any portion thereof. It is the intent of the Legislature that the board endeavor to ensure that the costs of administration of this section are as low as possible in order to provide the water consumers of Mississippi safe drinking water at affordable prices.

(d) Members of the board may not receive any salary, compensation or per diem for the performance of their duties under this section.

(2)(a) There is created a special fund in the State Treasury to be designated as the "Local Governments and Rural Water Systems Improvements Revolving Loan Fund," referred to in this section as "revolving fund," which fund shall consist of those monies as provided in Sections 6 and 13 of Chapter 521, Laws of 1995. The revolving fund may receive appropriations, bond proceeds, grants, gifts, donations or funds from any source, public or private. Except as otherwise provided in this section, the revolving fund shall be credited with all repayments of principal and interest derived from loans made from the revolving fund. Except as otherwise provided in this section, the monies in the revolving fund may be expended only in amounts appropriated by the Legislature, and the different amounts specifically provided for the loan program and the grant program shall be so designated. Except as otherwise provided in this section, monies in the fund may only be expended for the grant program from the amount designated for such program. The revolving fund shall be maintained in perpetuity for the purposes established in this section and Sections 6 through 20 of Chapter 521, Laws of 1995. Unexpended amounts remaining in the revolving fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in the revolving fund shall be deposited to the credit of the fund. Monies in the revolving fund may not be used or expended for any purpose except as authorized under this section and Sections 6 through 20 of Chapter 521, Laws of 1995. Any monies in the fund may be used to match any federal funds that are available for the same or related purposes for which funds are used and expended under this section and Sections 6 through 20 of Chapter 521, Laws of 1995. Any federal funds shall be used and expended only in accordance with federal laws, rules and regulations governing the expenditure of those funds. No person shall use any monies from the revolving fund for the acquisition of real property or any interest in real property unless that property is integral to the project funded under this section and the purchase is made from a willing seller. No county, incorporated municipality or district shall acquire any real property or any interest in any real property for a project funded through the revolving fund by condemnation. The board's application of Sections 43-37-1 through 43-37-13 shall be no more stringent or extensive in scope, coverage and effect than federal property acquisition laws and regulations.

(b) There is created a special fund in the State Treasury to be designated as the "Local Governments and Rural Water Systems Emergency Loan Fund," hereinafter referred to as "emergency fund," which fund shall consist of those monies as provided in Sections 6 and 13 of Chapter 521, Laws of 1995. The emergency fund may receive appropriations, bond proceeds, grants, gifts, donations or funds from any source, public or private. Except as otherwise provided in this section, the emergency fund shall be credited with all repayments of principal and interest derived from loans made from the emergency fund. Except as otherwise provided in this section, the monies in the emergency fund may be expended only in amounts appropriated by the Legislature. The emergency fund shall be maintained in perpetuity for the purposes established in this section and Section 6 of Chapter 521, Laws of 1995. Unexpended amounts remaining in the emergency fund at the end of a fiscal year shall not lapse into the State General Fund. Any interest earned on amounts in the emergency fund shall be deposited to the credit of the fund. Monies in the emergency fund may not be used or expended for any purpose except as authorized under this section and Section 6 of Chapter 521, Laws of 1995.

(c) The board created in subsection (1) shall establish loan and grant programs by which loans and grants may be made available to counties, incorporated municipalities, districts or other water organizations that have been granted tax-exempt status under either federal or state law, to assist those counties, incorporated municipalities, districts or water organizations in making water systems improvements, including the construction of new water systems or expansion or repair of existing water systems. Any entity eligible under this section may receive either a loan or a grant, or both. No grant awarded under the program established in this section may be made using funds from the loan program. Grants may be awarded only when the Legislature specifically appropriates funds for that particular purpose. The interest rate on those loans may vary from time to time and from loan to loan, and will be at or below market interest rates as determined by the board. The board shall act as quickly as is practicable and prudent in deciding on any loan request that it receives. Loans from the revolving fund or emergency fund may be made to counties, incorporated municipalities, districts or other water organizations that have been granted tax-exempt status under either federal or state law, as set forth in a loan agreement in amounts not to exceed one hundred percent (100%) of eligible project costs as established by the board. The board may require county, municipal, district or other water organization participation or funding from other sources, or otherwise limit the percentage of costs covered by loans from the revolving fund or the emergency fund. The board may establish a maximum amount for any loan from the revolving fund or emergency fund in order to provide for broad and equitable participation in the programs.

(d) A county that receives a loan from the revolving fund or the emergency fund shall pledge for repayment of the loan any part of the homestead exemption annual tax loss reimbursement to which it may be entitled under Section 27-33-77, as may be required to meet the repayment schedule contained in the loan agreement. An incorporated municipality that receives a loan from the revolving fund or the emergency fund shall pledge for repayment of the loan any part of the sales tax revenue distribution to which it may be entitled under Section 27-65-75, as may be required to meet the repayment schedule contained in the loan agreement. All recipients of such loans shall establish a dedicated source of revenue for repayment of the loan. Before any county or incorporated municipality shall receive any loan, it shall have executed with the Department of Revenue and the board a loan agreement evidencing that loan. The loan agreement shall not be construed to prohibit any recipient from prepaying any part or all of the funds received. The repayment schedule in each loan agreement shall provide for (i) monthly payments, (ii) semiannual payments, or (iii) other periodic payments, the annual total of which shall not exceed the annual total for any other year of the loan by more than fifteen percent (15%). Except as otherwise provided in subsection (4) of this section, the loan agreement shall provide for the repayment of all funds received from the revolving fund within not more than fifteen (15) years or a term as otherwise allowed by the federal Safe Drinking Water Act, and all funds received from the emergency fund within not more than five (5) years from the date of project completion, and any repayment shall commence not later than one (1) year after project completion. The Department of Revenue shall withhold semiannually from counties and monthly from incorporated municipalities from the amount to be remitted to the county or municipality, a sum equal to the next repayment as provided in the loan agreement.

(e) Any county, incorporated municipality, district or other water organization desiring to construct a project approved by the board which receives a loan from the state for that purpose but which is not eligible to pledge for repayment under the provisions of paragraph (d) of this subsection shall repay that loan by making payments each month to the State Treasurer through the Department of Finance and Administration for and on behalf of the board according to Section 7-7-15, to be credited to either the revolving fund or the emergency fund, whichever is appropriate, in lieu of pledging homestead exemption annual tax loss reimbursement or sales tax revenue distribution.

Loan repayments shall be according to a repayment schedule contained in each loan agreement as provided in paragraph (d) of this subsection.

(f) Any district created pursuant to Sections 19-5-151 through 19-5-207 that receives a loan from the revolving fund or the emergency fund shall pledge for repayment of the loan any part of the revenues received by that district pursuant to Sections 19-5-151 through 19-5-207, as may be required to meet the repayment schedule contained in the loan agreement.

(g) The State Auditor, upon request of the board, shall audit the receipts and expenditures of a county, an incorporated municipality, district or other water organization whose loan repayments appear to be in arrears, and if the Auditor finds that the county, incorporated municipality, district or other water organization is in arrears in those repayments, the Auditor shall immediately notify the chairman of the board who may take any action as may be necessary to enforce the terms of the loan agreement, including liquidation and enforcement of the security given for repayment of the loan, and the Executive Director of the Department of Finance and Administration who shall withhold all future payments to the county of homestead exemption annual tax loss reimbursements under Section 27-33-77 and all sums allocated to the county or the incorporated municipality under Section 27-65-75 until such time as the county or the incorporated municipality is again current in its loan repayments as certified by the board.

(h) Except as otherwise provided in this section, all monies deposited in the revolving fund or the emergency fund, including loan repayments and interest earned on those repayments, shall be used only for providing loans or other financial assistance to water systems as the board deems appropriate. In addition, any amounts in the revolving fund or the emergency fund may be used to defray the reasonable costs of administering the revolving fund or the emergency fund and conducting activities under this section and Sections 6 through 20 of Chapter 521, Laws of 1995, subject to any limitations established in the federal Safe Drinking Water Act, as amended and subject to annual appropriation by the Legislature. The department is authorized, upon approval by the board, to use amounts available to it from the revolving fund or the emergency fund to contract for those facilities and staff needed to administer and provide routine management for the funds and loan program. However, notwithstanding any other provision of law to the contrary, all or any portion of repayments of principal and interest derived from the fund uses described in this section may be designated or pledged for repayment of a loan as provided for in Section 31-25-28 in connection with a loan from the Mississippi Development Bank.

(3) In administering this section and Sections 6 through 20 of Chapter 521, Laws of 1995, the board created in subsection (1) of this section shall have the following powers and duties:

(a) To supervise the use of all funds made available under this section and Sections 6 through 20 of Chapter 521, Laws of 1995, for local governments and rural water systems improvements;

(b) To promulgate rules and regulations, to make variances and exceptions thereto, and to establish procedures in accordance with this section and Sections 6 through 20 of Chapter 521, Laws of 1995, for the implementation of the local governments and rural water systems improvements revolving loan program;

(c) To require, at the board's discretion, any loan or grant recipient to impose a per connection fee or surcharge or amended water rate schedule or tariff on each customer or any class of customers, benefiting from an improvement financed by a loan or grant made under this section, for repayment of any loan funds provided under this section and Sections 6 through 20 of Chapter 521, Laws of 1995. The board may require any loan or grant recipient to undergo a water system viability analysis and may require a loan or grant recipient to implement any result of the viability analysis. If the loan recipient fails to implement any result of a viability analysis as required by the board, the board may impose a monetary penalty or increase the interest rate on the loan, or both. If the grant recipient fails to implement any result of a viability analysis as required by the board, the board may impose a monetary penalty on the grant;

(d) To review and certify all projects for which funds are authorized to be made available under this section and Sections 6 through 20 of Chapter 521, Laws of 1995, for local governments and rural water systems improvements;

(e) To requisition monies in the Local Governments and Rural Water Systems Improvements Revolving Loan Fund and the Local Governments and Rural Water Systems Emergency Loan Fund and distribute those monies on a project-by-project basis in accordance with this section;

(f) To ensure that the funds made available under this section and Sections 6 through 20 of Chapter 521, Laws of 1995, to a county, an incorporated municipality, a district or a water organization that has been granted tax-exempt status under either federal or state law provide for a distribution of projects and funds among the entities under a priority system established by the board;

(g) To maintain in accordance with generally accepted government accounting standards an accurate record of all monies in the revolving fund and the emergency fund made available to counties, incorporated municipalities, districts or other water organizations under this section and Sections 6 through 20 of Chapter 521, Laws of 1995, and the costs for each project;

(h) To establish policies, procedures and requirements concerning viability and financial capability to repay loans that may be used in approving loans available under this section, including a requirement that all loan recipients have a rate structure which will be sufficient to cover the costs of operation, maintenance, major equipment replacement and repayment of any loans made under this section; and

(i) To file annually with the Legislature a report detailing how monies in the Local Governments and Rural Water Systems Improvements Revolving Loan Fund and the Local Governments and Rural Water Systems Emergency Loan Fund were spent during the preceding fiscal year in each county, incorporated municipality, district or other water organization, the number of projects approved and constructed, and the cost of each project.

For efficient and effective administration of the loan program, revolving fund and emergency fund, the board may authorize the department or the State Health Officer to carry out any or all of the powers and duties enumerated above.

(4) The board may, on a case-by-case basis and to the extent allowed by federal law, renegotiate the payment of principal and interest on loans made

under this section to the six (6) most southern counties of the state covered by the Presidential Declaration of Major Disaster for the State of Mississippi (FEMA-1604-DR) dated August 29, 2005, and to incorporated municipalities, districts or other water organizations located in such counties; however, the interest on the loans shall not be forgiven for a period of more than twenty-four (24) months and the maturity of the loans shall not be extended for a period of more than forty-eight (48) months.

HISTORY:

Laws, 1995, ch. 521, §§ 1-3; Laws, 1996, ch. 542, § 1; Laws, 1998, ch. 375, § 1; Laws, 2000, ch. 595, § 1; reenacted without change, Laws, 2001, ch. 420, § 7; Laws, 2002, ch. 399, § 1; Laws, 2006, ch. 545, § 1; Laws, 2007, ch. 514, § 8; Laws, 2007, ch. 583, § 1; reenacted without change, Laws, 2010, ch. 494, § 3; reenacted without change, Laws, 2010, ch. 505, § 7; reenacted and amended, Laws, 2014, ch. 352, § 7; reenacted without change, Laws, 2017, ch. 374, § 6, eff from and after July 1, 2017.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in the first sentence of subsection (3)(c). The words “this act” were changed to “this section”. The Joint Committee ratified the correction at its June 3, 2003, meeting.

Section 8 of ch. 514, Laws of 2007, effective June 30, 2007 (approved March 30, 2007), amended this section. Section 1 of ch. 583, Laws of 2007, effective July 1, 2007 (approved April 21, 2007), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 583, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section effective on an earlier date.

Section 3 of ch. 494, Laws of 2010, effective from and after passages (approved April 7, 2010), amended this section. Section 7 of ch. 505, Laws of 2010, effective July 1, 2010 (approved April 8, 2010) but amended by ch. 556, § 1, to be effective from and after May 1, 2010, reenacted the section without change. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 22, 2010, meeting of the Committee.

Editor’s Notes —

For repeal date of this section, see § 41-3-20.

Laws of 2007, ch. 514, § 22 provides as follows:

“SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act.” Laws of 2007, ch. 514 was approved on March 30, 2007.

Section 7-7-2 provides that the words “State Auditor of Public Accounts,” “State Auditor” and “Auditor” appearing in the laws of this state in connection with the performance of the Auditor’s functions shall mean the State Fiscal Officer whenever they appear. Section 27-104-6 provides that wherever the term “State Fiscal Officer” appears in any law it shall mean “Executive Director of the Department of Finance and Administration.”

Laws of 2010, ch. 556, § 1, provides:

“SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

“Section 18. This act shall take effect and be in force from and after May 1, 2010.”

Amendment Notes —

The 2017 amendment reenacted the section without change.

Cross References —

Revenue from certain taxes may be used as security for loan, see § 27-65-75.

Executive officer of the State Health Department to be State Health Officer, see § 41-3-5.1.

General powers and duties of executive officer, see § 41-3-15.

Federal Aspects—

Safe Drinking Water Act, see 42 USCS §§ 300f et seq.

RESEARCH REFERENCES

Am. Jur.
78 Am. Jur. 2d, Waters § 147, 155.

§ 41-3-17. Power to make and publish rules and regulations [Repealed effective July 1, 2021].

The State Board of Health is authorized to make and publish all reasonable rules and regulations necessary to enable it to discharge its duties and powers and to carry out the purposes and objectives of its creation. It is further authorized to make reasonable sanitary rules and regulations, to be enforced in the several counties by the county health officer under the supervision and control of the State Board of Health. The State Board of Health shall not make or enforce any rule or regulation that prohibits consumers from providing their own containers for the purpose of purchasing or accepting water from any vending machine or device which filters or treats water that has already been tested and determined to meet or exceed the minimum health protection standards prescribed for drinking water under the Mississippi Safe Drinking Water Law, if that vending machine or device meets or exceeds United States Environmental Protection Agency or national automatic merchandising standards.

HISTORY:

Codes, 1892, § 2273; 1906, § 2489; Hemingway's 1917, § 4838; 1930, § 4875; 1942, § 7031; Laws, 1968, ch. 441, § 3; reenacted without change, Laws, 1982, ch. 494, § 7; reenacted and amended, Laws, 1990, ch. 568, § 7; reenacted without change, Laws, 1994, ch. 462, § 7; reenacted, Laws, 1995, ch. 363, § 7; Laws, 1996, ch. 516, § 22; reenacted without change, Laws, 2001, ch. 420, § 8; reenacted without change, Laws, 2007, ch. 514, § 9; reenacted without change, Laws, 2010, ch. 505, § 8; reenacted without change, Laws, 2014, ch. 352, § 8; reenacted without change, Laws, 2017, ch. 374, § 7, eff from and after July 1, 2017.

Editor's Notes —

For repeal date of this section, see § 41-3-20.

Laws of 2007, ch. 514, § 22 provides as follows:

"SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act." Laws of 2007, ch. 514 was approved on March 30, 2007.

Laws of 2010, ch. 556, § 1, provides:

"SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

"Section 18. This act shall take effect and be in force from and after May 1, 2010."

Amendment Notes —

The 2017 amendment reenacted the section without change.

Cross References —

Powers and duties of the state board of health with regard to the Municipal and Domestic Water and Wastewater System Operator's Certification Act of 1986, see § 21-27-207.

Penalty for violation of rules, see § 41-3-59.

Mississippi Safe Drinking Water Law, see §§ 41-26-1 et seq.

Regulation of drugs, see §§ 41-29-101 et seq.

Powers and duties of the State Board of Health with respect to the Mississippi Occupational Therapy Practice Act, see §§ 73-24-1 et seq.

JUDICIAL DECISIONS

1. In general.

A regulation requiring every licensed physician practicing in the state to file a morbidity report on the first day of each month as provided by the rules of the state board of health is not unreasonable. Smythe v. State, 124 Miss. 454, 86 So. 870, 1920 Miss. LEXIS 529 (Miss. 1921).

Where the evidence in the trial of a physician for knowingly violating a rule of the state board of health does not show that the defendant had knowledge of such regulation, or that publication of such regulation had been made, the defendant is entitled to peremptory instructions. Smythe v. State, 124 Miss. 454, 86 So. 870, 1920 Miss. LEXIS 529 (Miss. 1921).

§ 41-3-18. Assessment of fees [Repealed effective July 1, 2020; Repealed effective July 1, 2021; See Editor's note].

(1) The board shall assess fees in the following amounts and for the following purposes:

(a) Food establishment annual permit fee, based on the assessment factors of the establishment as follows:

Assessment Category 1	$ 30.00
Assessment Category 2	100.00
Assessment Category 3	150.00
Assessment Category 4	200.00

(b) Private water supply approval fee .... $ 10.00

The board may develop such reasonable standards, rules and regulations to clearly define each assessment category. Assessment categories shall be based upon the factors to the public health implications of the category and type of food preparation being utilized by the food establishment, utilizing the model Food Code of 1995, or as may be amended by the federal Food and Drug Administration.

Any increase in the fees charged by the board under this subsection shall be in accordance with the provisions of Section 41-3-65.

(2) The fee authorized under subsection (1)(a) of this section shall not be assessed for:

(a) Food establishments operated by public schools, public junior and community colleges, or state agencies or institutions, including, without limitation, the state institutions of higher learning and the State Penitentiary; and

(b) Persons who make infrequent casual sales of honey and who pack or sell less than five hundred (500) gallons of honey per year, and those persons shall not be inspected by the State Department of Health unless requested by the producer.

(3) The fee authorized under subsection (1)(b) of this section shall not be assessed for private water supplies used by foster homes licensed by the Department of Human Services.

HISTORY:

Laws, 1986, ch. 371, § 2; Laws, 1988, ch. 395, § 5; Laws, 1989, ch. 313, § 1; Laws, 1989, ch. 547, § 1; reenacted, Laws, 1990, ch. 568, § 8; Laws, 1991, ch. 606, § 1; reenacted without change, Laws, 1994, ch. 462, § 8; reenacted, Laws, 1995, ch. 363, § 8; Laws, 1997, ch. 427, § 1; reenacted without change, Laws, 2001, ch. 420, § 9; reenacted and amended, Laws, 2007, ch. 514, § 10; Laws, 2008, ch. 315, § 1; Laws, 2009, ch. 331, § 1; reenacted without change, Laws, 2010, ch. 505, § 9; reenacted without change, Laws, 2014, ch. 352, § 9; Laws, 2016, ch. 510, § 4, eff from and after July 1, 2016.

Editor's Notes —

This section was amended by § 4 of Chapter 510 (HB 289), Laws of 2016, and was subject to the repealer contained in § 65 of that act, effective July 1, 2020. The section is also included within the span of sections repealed by § 41-3-20, which was amended by Chapter 374, Laws of 2017, to extend the date of the repealer to July 1, 2021. The section is subject to both repealers.

Laws of 2007, ch. 514, § 22 provides as follows:

"SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act." Laws of 2007, ch. 514 was approved on March 30, 2007.

Laws of 2010, ch. 556, § 1, provides:

"SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

"Section 18. This act shall take effect and be in force from and after May 1, 2010."

Laws of 2016, ch. 510, § 65 provides:

"SECTION 65. This act shall stand repealed on July 1, 2020."

RESEARCH REFERENCES

Am. Jur.

39 Am. Jur. 2d, Health §§ 109, 110.

CJS.

39A C.J.S., Health & Environment §§ 91, 92.

§ 41-3-19. Report to the Governor [Repealed effective July 1, 2021].

It is the duty of the State Board of Health to make a report, in writing, to the Governor, on or before the first day of December next preceding each session, not an extraordinary session of the Legislature, upon the sanitary condition, prospect, and needs of the state, setting forth the action of said board, of its officers and agents, the names thereof, and all its expenditures since the last preceding report, and such other matters as it may deem proper for the promotion of health or the prevention of disease. The report shall be laid before the Legislature by the Governor at its ensuing term.

HISTORY:

Codes, 1892, § 2272; 1906, § 2488; Hemingway's 1917, § 4837; 1930, § 4874; 1942, § 7030; reenacted and amended, Laws, 1982, ch. 494, § 8; reenacted, Laws, 1990, ch. 568, § 9; reenacted without change, Laws, 1994, ch. 462, § 9; reenacted, Laws, 1995, ch. 363, § 9; reenacted without change, Laws, 2001, ch. 420, § 10; reenacted without change, Laws, 2007, ch. 514, § 11; reenacted without change, Laws, 2010, ch. 505, § 10; reenacted without change, Laws, 2014, ch. 352, § 10; reenacted without change, Laws, 2017, ch. 374, § 8, eff from and after July 1, 2017.

Editor's Notes —

For repeal date of this section, see § 41-3-20.

Laws of 2007, ch. 514, § 22 provides as follows:

"SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act." Laws of 2007, ch. 514 was approved on March 30, 2007.

Laws of 2010, ch. 556, § 1, provides:

"SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

"Section 18. This act shall take effect and be in force from and after May 1, 2010."

Amendment Notes —

The 2017 amendment reenacted the section without change.

Cross References —

Reports of local health officers to state board of health, see § 41-3-51.

§ 41-3-20. Repeal of Sections 41-3-1.1 through 41-3-19.

Sections 41-3-1.1, 41-3-3, 41-3-4, 41-3-5.1, 41-3-6, 41-3-15, 41-3-16, 41-3-17, 41-3-18 and 41-3-19, which create the reconstituted State Board of Health, establish the position of Executive Officer of the State Department of Health and establish the State Department of Health and prescribe its powers and duties, shall stand repealed on July 1, 2021.

HISTORY:

Laws, 1994, ch. 462, § 11; Laws, 1995, ch. 363, § 10; Laws, 2001, ch. 420, § 11; Laws, 2007, ch. 514, § 1; Laws, 2010, ch. 505, § 11; Laws, 2014, ch. 352, § 13; Laws, 2017, ch. 374, § 9, eff from and after July 1, 2017.

Editor's Notes —

Laws of 2007, ch. 514, § 22 provides as follows:

"SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act." Laws of 2007, ch. 514 was approved on March 30, 2007.

This section was amended by Laws of 2010, ch. 505, § 11, effective from and after July 1, 2010. The effective date of Laws of 2010, ch. 505, was subsequently amended by Laws of 2010, ch. 556, § 1, which provides:

"SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

"Section 18. This act shall take effect and be in force from and after May 1, 2010."

Amendment Notes —

The 2017 amendment extended the date of the repealer for §§ 41-3-1.1, 41-3-3, 41-3-4, 41-3-5.1, 41-3-6, 41-3-15, 41-3-16, 41-3-17, 41-3-18 and 41-3-19 by substituting "July 1, 2021" for "July 1, 2017."

§ 41-3-21. Mississippi Public Health Laboratory created; powers and duties.

(1) There is hereby established the Mississippi Public Health Laboratory in the Mississippi State Department of Health.

(2) The Mississippi Public Health Laboratory shall have the following powers and duties:

(a) To perform such laboratory tests and procedures as shall be determined beneficial to the health of the people of Mississippi;

(b) To apply for and maintain any and all necessary federal or other certifications and/or licenses for the performance of its duties, unless such authority shall be otherwise assigned by official action of the State Board of Health;

(c) The Mississippi Public Health Laboratory shall be under the management of a director, who shall be appointed by the State Health Officer. The responsibility for the laboratory shall be vested in the director. The director shall be the administrative officer of the Mississippi Public Health Laboratory and shall perform the duties as may be assigned to him or her by the State Board of Health. The director shall receive compensation as may be fixed by the State Board of Health, subject to the approval of the State Personnel Board. The State Health Officer may employ such other persons as may be necessary to carry out the provisions of this section. The compensation and the terms and conditions of their employment shall be determined by the State Board of Health in accordance with applicable state law and rules and regulations of the State Personnel Board.

HISTORY:

Laws, 2009, ch. 301, § 1, effective from and after passage (approved January 28, 2009).

Editor's Notes —

A former § 41-3-21 [Codes, 1892, § 2274; 1906, § 2490; Hemingway's 1917, § 4839; 1930, § 4876; 1942, § 7032], which authorized the state board of health to fill vacancies, was repealed by Laws of 1982, ch. 494, § 16, effective from and after July 1, 1982.

§ 41-3-22. Mississippi State Public Health Laboratory named the Dr. F.E. "Ed" Thompson, Jr., Mississippi State Public Health Laboratory.

The Mississippi State Public Health Laboratory, located at 570 East Woodrow Wilson in Jackson, Mississippi, shall be named the Dr. F.E. "Ed" Thompson, Jr., Mississippi State Public Health Laboratory. The Department of Finance and Administration shall prepare or have prepared a distinctive plaque, to be placed in a prominent place within the Dr. F.E. "Ed" Thompson, Jr., Mississippi State Public Health Laboratory, which states the background, accomplishments and public health service to the state and nation of Ed Thompson, M.D., M.P.H.

HISTORY:

Laws, 2010, ch. 305, § 1, eff from and after passage (approved Feb. 23, 2010.).

§ 41-3-23. Mississippi Public Health Laboratory Fund established; use of other funds to support Mississippi Public Health Laboratory authorized.

(1) There is established in the State Treasury a special fund to be known as the Mississippi Public Health Laboratory Fund, which shall be comprised of any funds that are authorized or required to be deposited in the special fund including, but not limited to, all laboratory fees collected and other income generated by the laboratory. Monies in the fund shall be used for the operations of the Mississippi Public Health Laboratory or the administration thereof. All income from the investment of the funds in the special fund shall be credited to the account of the special fund. Any funds in the special fund at the end of a fiscal year shall not lapse into the State General Fund.

(2) The State Department of Health is authorized to utilize any other funds not otherwise specifically appropriated by the Legislature for the support of the Mississippi Public Health Laboratory as necessary.

HISTORY:

Laws, 2009, ch. 301, § 2, eff from and after passage (approved Jan. 28, 2009.).

Editor's Notes —

A former §41-3-23 [Codes, 1942, §§ 7031, 7066-01; Laws, 1968, ch. 441, §§ 1, 3], which designated the State Board of Health as the tumor registry agency of the state, was repealed by Laws of 1982, ch. 494, § 16, effective from and after July 1, 1982.

§§ 41-3-25 through 41-3-29. Repealed.

Repealed by Laws, 1982, ch. 494, § 16, eff from and after July 1, 1982.

§ 41-3-25. [Codes, 1942, § 1697; Laws, 1968, ch. 441, § 4]

§ 41-3-27. [Codes, 1942, § 7066-02; Laws, 1968, ch. 441, § 7]

§ 41-3-29. Codes, 1942, § 7066-03; Laws, 1968, ch. 441, § 8]

Editor's Notes —

Former § 41-3-25 specified the information to be furnished to the tumor registry agency.

Former § 41-3-27 specified penalties for violations.

Former § 41-3-29 authorized the tumor registry agency to accept federal grants and assistance.

§ 41-3-30. Repealed.

Repealed by Laws, 1994, ch. 462, § 10, eff from and after July 1, 1994.

[Laws, 1979, ch. 301, § 47; Laws, 1982, ch. 494, § 9; Laws, 1990, ch. 568, § 10]

Editor's Notes —

Former § 41-3-30 was entitled: Repeal of §§ 41-3-1 through 41-3-19. See Section 41-3-20 for repeal provisions for §§ 41-3-1 through 41-3-19.

§§ 41-3-31 through 41-3-35. Repealed.

Repealed by Laws, 1976, ch. 469, § 21, eff from and after passage (approved May 25, 1976).

§§ 41-3-31 through 41-3-35 [Laws, 1964, ch. 435, §§ 1, 2]

Editor's Notes —

Former § 41-3-31 designated the State Board of Health as the state's radiation control agency and provided for the promulgation of rules and regulations.

Former § 41-3-33 provided for a radiation advisory committee, with authority to approve nuclear control rules and regulations and advise the state board of health concerning nuclear matters.

Former § 41-3-35 provided for the enforcement of §§ 41-3-31 through 41-3-35 and nuclear control rules and regulations, declared a misdemeanor and provided a penalty.

§ 41-3-37. Appointment of county health officer.

A competent physician shall be appointed county health officer for each county by the State Board of Health or its executive officer. Said board shall cause the appointment to be certified by its secretary to the board of supervisors of the county for which the appointment was made.

HISTORY:

Codes, 1892, § 2275; 1906, § 2491; Hemingway's 1917, § 4840; 1930, § 4877; 1942, § 7033; Laws, 1982, ch. 494, § 10, eff from and after July 1, 1982.

Cross References —

County health department, see §§ 41-3-43, 41-3-45, 41-3-49 to 41-3-53.

Municipal regulation of health, see § 41-3-57.

Inspection of establishments employing child labor, see § 71-1-25.

JUDICIAL DECISIONS

ANALYSIS

1. Validity.
2. Construction and application.

1. Validity.

The powers vested in the state board of health under this section [Code 1942, § 7033] held to be constitutional. Hawkins v. Hoye, 108 Miss. 282, 66 So. 741, 1914 Miss. LEXIS 201 (Miss. 1914).

2. Construction and application.

The power of the board of supervisors to fix the salary of a county health officer cannot be reviewed by the circuit court unless the board fix the salary so low as to oust the officer or in effect abolish the officer. Board of Sup'rs v.

Powell, 122 Miss. 665, 84 So. 905, 1920 Miss. LEXIS 467 (Miss. 1920).

Compensation of health officers appointed by municipalities discussed. Town of Pass Christian v. Washington, 81 Miss. 470, 34 So. 225, 1902 Miss. LEXIS 211 (Miss. 1902).

A county health officer, appointed by the board of supervisors under this section [Code 1942, § 7033], is only entitled to the salary fixed in advance by the board of supervisors as compensation for official services rendered by him, and he cannot maintain an action of assumpsit upon a quantum meruit for such services, however great. Yandell v. Madison County, 81 Miss. 288, 32 So. 918, 1902 Miss. LEXIS 125 (Miss. 1902).

The board of supervisors cannot fix or reduce after being fixed the salary of the county health officer so as to virtually abolish the office. Board of Sup'rs v. Westbrook, 64 Miss. 312, 1 So. 352, 1886 Miss. LEXIS 63 (Miss. 1886).

§ 41-3-39. Repealed.

Repealed by Laws, 1982, ch. 494, § 16, eff from and after July 1, 1982.

[Codes, 1892, § 2285; 1906, § 2509; Hemingway's 1917, § 4858; 1930, § 4895; 1942, § 7051]

Editor's Notes —

Former § 41-3-39 authorized the payment of compensation to the county health officer.

§ 41-3-41. Duties of county health officer.

It shall be the duty of the county health officer to administer programs and enforce the public health provisions of the Mississippi Code and the rules and regulations of the state board of health applicable in his county. He shall report his actions and all informations and results of his investigations to the board of supervisors and state board of health, and he shall do such other things as the state board of health may lawfully require of him.

HISTORY:

Codes, 1892, § 2276; 1906, § 2494; Hemingway's 1917, § 4843; 1930, § 4880; 1942, § 7036; Laws, 1894, ch. 39; Laws, 1982, ch. 494, § 11, eff from and after July 1, 1982.

Cross References —

Communicable and infectious diseases, see §§ 41-23-1 et seq.

Disinfection and sanitation of buildings and premises, see §§ 41-25-1 et seq.

Regulation of hotels and innkeepers, see §§ 41-49-1 et seq.

JUDICIAL DECISIONS

1. In general.

Under this section [Code 1942, § 7036] and other sections, the legislature conferred upon the state board of health the power to make reasonable rules and regulations for the prevention of diseases and the protection of the health of the people. Hawkins v. Hoye, 108 Miss. 282, 66 So. 741, 1914 Miss. LEXIS 201 (Miss. 1914).

The orders of the state board of health must stand the test of reasonableness and whether an order be reasonable or unreasonable is a judicial question. Wilson v. Alabama G. S. R. Co., 77 Miss. 714, 28 So. 567, 1900 Miss. LEXIS 51 (Miss. 1900).

RESEARCH REFERENCES

ALR.

Propriety of state or local government health officer's warrantless search–post-Camara cases. 53 A.L.R.4th 1168.

§ 41-3-43. County department of health; director.

(1) Each county in the state is authorized in its discretion to create a county health department and to appropriate funds for its support. A director for the same shall be appointed in accordance with Section 41-3-37 and certified to the board of supervisors of the county. Said director shall be a licensed physician, well trained in health work and shall be required to give his entire time to the work.

(2)(a) The State Board of Health may create public health districts of two (2) or more counties for the purpose of administering health programs and supervising public health workers in the district. The state board of health or its executive officer shall appoint for each such district created a district director, who shall be a licensed physician, well trained in public health work, who shall give his entire time to the work. The district director may serve as county health officer of any or all counties in the district.

(b) The boards of supervisors of the counties comprising a public health district are hereby authorized, in their discretion, to appropriate funds for the support of the public health district from the general funds of the counties; and pursuant to Section 19-9-97, to levy additional taxes for the support of county or district health departments.

(3) When any county or counties create a health department hereunder, then all other local or municipal or county public health agencies and departments are thereby automatically abolished, and said county and district health departments shall have full control over all health matters in said county and counties, including all municipalities therein, subject to the supervision, direction, and jurisdiction of the state board of health. The proper authorities of any municipality in the State of Mississippi are hereby authorized in their discretion to make an appropriation for the support of such county or district health department from the general funds of such municipality.

HISTORY:

Codes, Hemingway's 1921 Supp. § 4884g; 1930, § 4926; 1942, § 7082; Laws, 1918, ch. 194; Laws, 1926, ch. 309; Laws, 1982, ch. 494, § 12, eff from and after July 1, 1982.

Cross References —

Municipal quarantine regulations, see §§ 21-19-3, 21-19-17.

County health officer, see § 41-3-37.

Municipal regulations of health, see § 41-3-57.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 7082], abolishing all other local, municipal, and county health agencies on creation by county of health department hereunder, controls general statutes empowering municipalities to enact ordinances and prescribe health regulations. City of Jackson v. Ferguson, 167 Miss. 819, 150 So. 531, 1933 Miss. LEXIS 151 (Miss. 1933).

Where county had created health department under this section [Code 1942, § 7082], providing for automatic abolition of all other local, municipal, and county health agencies, municipal ordinance providing for inspection of all foods offered for sale and payment of fees fixed in ordinance was void. City of Jackson v. Ferguson, 167 Miss. 819, 150 So. 531, 1933 Miss. LEXIS 151 (Miss. 1933).

RESEARCH REFERENCES

ALR.
Propriety of state or local government health officer's warrantless search–post-Camara cases. 53 A.L.R.4th 1168.

§ 41-3-45. Term of office of director; removal.

The State Board of Health shall remove any director at any time for such conduct as it may deem improper, or for neglect of duty, or for incompetency, or for any offense which in its judgment, is detrimental to the public welfare. It may summarily suspend any director until any complaint made of such director may be fully investigated by the State Board of Health.

HISTORY:
Codes, Hemingway's 1921 Supp. § 4884i; 1930, § 4928; 1942, § 7084; Laws, 1920, ch. 208; Laws, 1982, ch. 494, § 13, eff from and after July 1, 1982.

Cross References —
County health officer, see § 41-3-37.

§ 41-3-47. Repealed.

Repealed by Laws, 1982, ch. 494, § 16, eff from and after July 1, 1982.

[Codes, Hemingway's 1921 Supp. § 4884l; 1930, § 4931; 1942, § 7087; Laws, 1920, ch. 208]

Editor's Notes —
Former § 41-3-47 provided that the director of a county board of health did not have to be a resident, and directed that the director be furnished living quarters.

§ 41-3-49. Powers and duties of director.

The director appointed pursuant to Section 41-3-43 shall be given authority to enforce all health laws of the district or county under the supervision and direction of the State Board of Health, or its executive committee, and to make such investigation of health problems and recommend and institute such measures as may be necessary. He shall be under the supervision, direction and jurisdiction of the State Board of Health, or its executive committee, and he shall make report to said Board of Health of all matters concerning the sanitary conditions of his district or county in the manner prescribed by the state board of health, or its executive committee.

HISTORY:
Codes, Hemingway's 1921 Supp. § 4884h; 1930, § 4927; 1942, § 7083; Laws, 1920, ch. 208.

Cross References —
County health officer, see § 41-3-37.

Director of State Board of Health being member of marine conservation commission, see § 49-15-11.

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. 2d, Health §§ 1 et seq.

CJS.
39A C.J.S., Health and Environment §§ 18 et seq.

§ 41-3-51. Records and reports of director.

The director appointed pursuant to Section 41-3-43 of any county or district shall keep an accurate record of all activities of the department of health of the county or district which he serves for use of the public and for information to the board of health, and such reports as required by the board of health shall be made to it. All officers and employees of the county or district department of health shall be subject to the jurisdiction and regulations of the state board of health or its executive committee.

HISTORY:
Codes, Hemingway's 1921 Supp. § 4884k; 1930, § 4930; 1942, § 7086; Laws, 1920, ch. 208.

Cross References —
Reports by state board of health, see § 41-3-19.

§ 41-3-53. Maintenance of county department of health.

The board of supervisors shall be authorized to make such appropriations for the department of health as may be necessary to pay the salary of the director, and the salaries of all necessary sanitary inspectors, nurses, and such other employees as may be employed for carrying on the work. The board shall be authorized to pay all necessary traveling expenses of said employees in the performance of their duties. The board shall be authorized to pay for all necessary medicine, materials and supplies. The board shall provide an office for its health department, and furnish said office, and its employees, with all necessary record books, stationery, stamps, tables, chairs, furniture and all other necessary articles. The board is also authorized to do any and all things necessary and proper to maintain and support a health department. Where two (2) or more counties shall unite in having a department of health, the amount contributed by each for maintaining and supporting the work shall be agreed upon by the respective counties, subject to the approval of the state board of health, or its executive committee, and all salaries to be paid shall be recommended by the state board of health, or its executive committee to the board of supervisors of the county or counties for which the officers or employees are to act. All employees shall be recommended by the state board of health, or its executive committee, and all salaries shall be recommended in the same way.

HISTORY:
Codes, Hemingway's 1921 Supp. § 4884j; 1930, § 4929; 1942, § 7085; Laws, 1920, ch. 208; Laws, 1940, ch. 264.

§ 41-3-55. Repealed.

Repealed by Laws, 1982, ch. 494, § 16, eff from and after July 1, 1982.

[Codes, 1906, § 1645; Hemingway's 1917, § 4823; 1930, § 4865; 1942, § 7021]

Editor's Notes —
Former § 41-3-55 directed the appointment of a county board of health in each county of the state.

§ 41-3-57. Municipal regulation of health.

Any municipality may pass public health laws or ordinances and enforce the collection and registration of birth, health, and mortuary statistics. However, such power shall be subject to and not inconsistent with the rules and regulations of the state board of health touching the health interests of the county in which such municipality is situated. In the absence of an explicit agreement to the contrary between the state board of health and such municipality, enforcement of municipal laws shall be the responsibility of the municipality.

HISTORY:
Codes, 1892, § 2281; 1906, § 2505; Hemingway's 1917, § 4854; 1930, § 4891; 1942, § 7047; Laws, 1982, ch. 494, § 14, eff from and after July 1, 1982.

Cross References —
Municipal quarantine regulations, see §§ 21-19-3, 21-19-17.

County health officer, see § 41-3-37.

County health departments, see §§ 41-3-43, 41-3-45, 41-3-49 through 41-3-53.

JUDICIAL DECISIONS

1. In general.
Ordinance forbidding barber shops to open before 7:30 a.m. or remain open after 6:30 p.m. could not be held valid on ground it was designed to fix reasonable time for inspecting barber shops. Knight v. Johns, 161 Miss. 519, 137 So. 509, 1931 Miss. LEXIS 290 (Miss. 1931).

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. 2d, Health § 5.

CJS.
39A C.J.S., Health and Environment §§ 4, 6, 10.

§ 41-3-59. Violation of health rules.

Except as may otherwise be provided, any person who shall knowingly violate any of the provisions of this chapter, or any rule or regulation of the state board of health, or any order or regulation of the board of supervisors of any county or any municipal ordinance herein authorized to be made, shall be guilty of a misdemeanor, and on conviction shall be punished by fine not exceeding Five Hundred Dollars ($500.00), or by imprisonment in the county jail for not more than six (6) months, or by both.

HISTORY:

Codes, 1892, § 2287; 1906, § 2511; Hemingway's 1917, § 4860; 1930, § 4897; 1942, § 7053; Laws, 1983, ch. 522, § 2, eff from and after July 1, 1983.

Cross References —

Rules of state board of health, see § 41-3-17.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 7053] and other sections bestowed upon the state board of health the authority to make reasonable rules and regulations for the prevention of diseases and the protection of the health of the people. Hawkins v. Hoye, 108 Miss. 282, 66 So. 741, 1914 Miss. LEXIS 201 (Miss. 1914).

§ 41-3-61. Legislative findings about patient-centered medical homes; State Board of Health to adopt guidelines applicable to physician practices, nurse practitioner practices and physician assistant practices that incorporate principles of patient-centered medical home.

(1) The Legislature makes the following findings:

(a) There are patient programs that provide a whole-person orientation that includes care for all stages of life, including acute care, chronic care, preventive services and end-of-life care;

(b) A patient-centered medical home must have Health Information Exchange compliant records, electronically integrated with electronic patient health records, and use practice-based disease management applications to facilitate and measure quality of care at the point of care;

(c) A patient in a patient-centered medical home actively participates in health care decision making, and feedback from the patient is sought to ensure that the expectations of the patient are being met;

(d) Care in a patient-centered medical home is coordinated across all elements of the health care system and the patient's community to assure that the patient receives the indicated care when and where the patient needs the care in a culturally appropriate manner;

(e) Multiple studies have demonstrated that when minorities have a medical home, racial and ethnic disparities in terms of medical access disappear and the costs of health care decrease;

(f) The American Academy of Pediatrics, the American Academy of Family Physicians, the American College of Physicians, and the American Osteopathic Association, representing more than three hundred thirty thousand (330,000) physicians across the country, have developed Joint Principles of the Patient-Centered Medical Home that describe the characteristics of the patient-centered medical home;

(g) The National Committee for Quality Assurance is developing a patient-centered medical home designation program for physician practices that meets specified criteria; and

(h) The Federal Tax Relief and Health Care Act calls for a three-year medical home demonstration project to be conducted in eight (8) states.

(2) The State Board of Health shall adopt guidelines applicable to physician practices, nurse practitioner practices and physician assistant practices in Mississippi that incorporate the principles of the patient-centered medical home, using all resources available to the board.

HISTORY:
Laws, 2010, ch. 402, § 1, eff from and after July 1, 2010.

§ 41-3-63. "Mary D. Osborne Building" renamed the "Dr. Alton B. Cobb — Mary D. Osborne State Public Health Building."

The "Mary D. Osborne Building" located at 570 East Woodrow Wilson Drive, Jackson, Mississippi, shall be renamed the "Dr. Alton B. Cobb – Mary D. Osborne State Public Health Building." The Department of Finance and Administration shall prepare or have prepared a distinctive plaque, to be placed in a prominent place within the Dr. Alton Cobb – Mary D. Osborne State Public Health Building which states the background, accomplishments and public health service of Dr. Cobb and Mary Osborne to the State of Mississippi.

HISTORY:
Laws, 2010, ch. 505, § 15, eff from and after May 1, 2010. See Editor's Note.

Editor's Notes —
This section was enacted by Laws of 2010, ch. 505, § 15, effective July 1, 2010. The effective date of Laws of 2010, ch. 505, was subsequently amended by Laws of 2010, ch. 556, § 1, which provides:

"SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

"Section 18. This act shall take effect and be in force from and after May 1, 2010."

§ 41-3-65. Increase of fees for services or issuance and renewal of licenses and registrations [Repealed effective July 1, 2020].

Except as otherwise provided by law, the State Board of Health or the State Department of Health may increase the amount of any fee charged by the board or the department for providing a service, including the issuance and renewal of licenses and registrations, not more than two (2) times during the period from July 1, 2016, through June 30, 2020, with the percentage of each increase being not more than fifteen percent (15%) of the amount of the fee in effect at the time of the increase.

HISTORY:
Laws, 2016, ch. 510, § 1, eff from and after July 1, 2016.

Editor's Notes —
Laws of 2016, ch. 510, § 65 provides:

"SECTION 65. This act shall stand repealed on July 1, 2020."

MEDICAL SERVICES FOR UNINSURED

Sec.
41-3-101. Provision of free medical services to those uninsured and unable to pay.

§ 41-3-101. Provision of free medical services to those uninsured and unable to pay.

The State Department of Health is authorized to contract with the Mississippi State Medical Association or any other party for the purpose of establishing a statewide, district, county or local pilot program, on a pilot program basis, for providing needed medical services at no charge to persons who have no form of health insurance and are unable to pay for such medical services. Any such pilot program shall be conditioned upon the availability of funds obtained for such purpose from public or private sources. Under such program, the department shall set the criteria for eligibility to receive such free medical services and, through the county health departments, shall determine which individuals are eligible to receive such services.

HISTORY:

Laws, 1990, ch. 544, § 1; Laws, 2010, ch. 505, § 13, eff from and after May 1, 2010. See Editor's Note.

Editor's Notes —

This section was amended by Laws of 2010, ch. 505, § 13, effective from and after July 1, 2010. The effective date of Laws of 2010, ch. 505, was subsequently amended by Laws of 2010, ch. 556, § 1 which provides:

"SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

"Section 18. This act shall take effect and be in force from and after May 1, 2010."

HEALTH ACTION PLANS

Sec.
41-3-201. Health action plans.

§ 41-3-201. Health action plans.

(1) Diabetes annual action plan; submission; content. The State Department of Health shall submit an action plan to the Senate Committee on Public Health and Welfare and the House Committee on Public Health and Human Services no later than February 1 of each year on the following:

(a) The financial impact and reach diabetes of all types is having on the State of Mississippi and its residents. Items in this assessment shall include the number of lives with diabetes covered by the State Department of Health, its contracted partners and other stakeholders, the number of lives with diabetes impacted by the prevention and diabetes control programs implemented by the department and its contracted partners, the financial cost diabetes and its complications places on the department and its contracted partners, and the financial cost diabetes and its complications places on the department and its contracted partners in comparison to other chronic diseases and conditions for which the state collects data.

(b) An assessment of the benefits of implemented programs and activities aimed at controlling diabetes and preventing the disease.

(c) A description of the level of coordination existing between the State Department of Health, its contracted partners, and other stakeholders on activities, programmatic activities, and the level of communication on managing, treating or preventing all forms of diabetes and its complications.

(d) The development of a detailed action plan for battling diabetes with a range of actionable items. The plan shall identify proposed action steps to reduce the impact of diabetes, prediabetes, and related diabetes complications. The plan shall identify expected outcomes of the action steps proposed while establishing benchmarks for controlling and preventing diabetes.

(e) The development of a detailed budget blueprint identifying needs, costs, and resources to implement the plan identified in paragraph (d) of this subsection.

The State Department of Health shall develop a voluntary protocol for practitioners consisting of clinical quality and performance measures for the treatment of patients with diabetes. The clinical quality and performance measures shall include A1c control, low density lipoprotein control, high blood pressure control, hypoglycemia control and tobacco nonuse.

(2) Obesity annual action plan; submission; content. The State Department of Health shall submit an action plan to the Senate Committee on Public Health and Welfare and the House Committee on Health and Human Services no later than February 1 of each year on the following:

(a) The financial impact and reach obesity is having on the State of Mississippi and its residents. Items included in this assessment shall include the number of lives with obesity covered by the State Department of Health and its contracted partners and other stakeholders, the number of lives with obesity impacted by the prevention and control programs implemented by the State Department of Health and its contracted partners, the financial cost obesity and its complications places on the State Department of Health and its contracted partners, and the financial cost obesity and its complications places on the State Department of Health and its contracted partners in comparison to other chronic diseases and conditions for which the state collects data.

(b) An assessment of the benefits of implemented programs and activities aimed at controlling obesity and preventing the disease.

(c) A description of the level of coordination existing between the State Department of Health, its contracted partners, and other stakeholders on activities, programmatic activities, and the level of communication on managing, treating or preventing obesity and its complications.

(d) The development of a detailed action plan for battling obesity with a range of actionable items. The plan shall identify proposed action steps to reduce the impact of obesity and related obesity complications. The plan shall identify expected outcomes of the action steps proposed while establishing benchmarks for controlling and preventing obesity.

(e) The development of a detailed budget blueprint identifying needs, costs and resources to implement the plan identified in paragraph (d) of this subsection (2).

(3) The State Department of Health is authorized and empowered to accept and expend monetary or in-kind contributions, gifts and grants to carry out the provisions of this section. Such contributions, gifts and grants shall be deposited into a special fund, hereby established in the State Treasury, to be known as the "Health Action Plan Contribution Fund."

HISTORY:

Laws, 2014, ch. 352, § 12, eff from and after July 1, 2014.

CHAPTER 4.

DEPARTMENT OF MENTAL HEALTH

Sec.
41-4-1. Declaration of goal; promulgation of regulations to ensure certain core mental health services are provided throughout the state.
41-4-2. Purpose of chapter.
41-4-3. State Board of Mental Health.
41-4-5. State Department of Mental Health.
41-4-7. Powers and duties of board [Paragraph (f) repealed effective July 1, 2017].
41-4-8. Falsification of diagnosis of Medicaid-eligible client for mental health benefits.
41-4-9. Advisory councils.
41-4-10. Repealed.
41-4-11. Abolition of certain agencies, and transfer of authority, personnel and property to state board of mental health.
41-4-13. Purchases.
41-4-15. Repealed.
41-4-17. Children's rehabilitation center excepted from state board of mental health jurisdiction.
41-4-18. Department authorized to contract with private or public entities to transfer certain ICFMR beds to other private or public entities to better meet needs of individuals with intellectual disabilities; license for beds to remain with department.
41-4-19. Transfer of funds; issuance of warrants.
41-4-21. Fiscal procedures.
41-4-23. Security guards and campus police at mental health or intellectual disability facilities.
41-4-25. Director of mental health facility authorized to transfer patient to another department facility.
41-4-27. Mental health crisis center in Brookhaven, Mississippi, named in honor of Senator Billy V. Harvey.

§ 41-4-1. Declaration of goal; promulgation of regulations to ensure certain core mental health services are provided throughout the state.

(1) The goal of the Rose Isabel Williams Mental Health Reform Act of 2011 is to reform the current Mississippi mental health delivery system so that necessary services, supports and operational structures for all its citizens with mental illness and/or alcohol and drug dependence and/or comorbidity, whether children, youth or adults, are accessible and delivered preferably in the communities where these citizens live. To accomplish this goal, this act provides that initially certain core services as defined in subsection (2) of this section should be available to residents of each county in the state. These services may be provided by community mental health/intellectual disability centers. In order to determine what services are available, the State Department of Mental Health is directed to survey the community mental health/intellectual disability centers, and the community mental health/intellectual disability centers are directed to report what services they are currently providing in each county. This act does not require any community mental health/intellectual disability center to provide any service. This act is not independent authority for any program not otherwise authorized.

(2) The State Board of Mental Health is authorized and empowered to promulgate regulations to ensure that core adult mental health services, child mental health services, intellectual/developmental disability services, and substance abuse prevention and treatment/rehabilitation services are provided throughout the state through the regional mental health/intellectual disability commissions and centers or through other providers. The State Board of Mental Health is directed to give priority to crisis services and crisis stabilization unit services provided twenty-four (24) hours a day, seven (7) days a week, where trained emergency-crisis response staff triage referrals and respond in a timely and adequate manner to diffuse a current personal crisis situation.

HISTORY:

Laws, 1974, ch. 567, § 1; Laws, 2010, ch. 476, § 17; Laws, 2011, ch. 501, § 2, eff from and after July 1, 2011.

Editor's Notes —

Laws of 2009, ch. 552, § 1, as amended by Laws of 2010, ch. 513, § 1, provides:

"SECTION 1. (1) There is created a Joint Legislative Study Committee to study and make recommendations for improving the mental health system in Mississippi. The committee shall, at a minimum, examine the following topics:

"(a) The current delivery system of mental health services by state, regional and local public entities;

"(b) The structure of the State Department of Mental Health, including the makeup of the State Board of Mental Health and the qualifications of the executive director of the department;

"(c) The delivery of mental health services through a community-based system rather than an institutional-based system, focusing on delivery through the community mental health centers;

"(d) The disparity of services and programs within the different community mental health regions as they are currently comprised;

"(e) The options and solutions for ongoing and long-term financing of the community mental health system;

"(f) The organizational structure of the community mental health system, including the makeup of the commissions and the governing authority of each community mental health region; and

"(g) Any other matters of importance relating to the delivery of mental health services in the state.

"(2) The joint committee shall be composed of the following ten (10) members:

"(a) The Chairman of the House Public Health and Human Services Committee and the Chairman of the Senate Public Health and Welfare Committee, who will be the cochairmen of the joint committee;

"(b) The Chairman of the House Appropriations Committee, or his designee;

"(c) The Chairman of the Senate Appropriations Committee, or his designee;

"(d) Three (3) senators to be appointed by the Lieutenant Governor; and

"(e) Three (3) representatives to be appointed by the Speaker of the House.

"(3) Appointments shall be made within thirty (30) days after the effective date of this section. The first meeting of the committee shall be held on a day to be designated jointly by the Speaker of the House and the Lieutenant Governor. A majority of the members of the committee shall constitute a quorum. In the adoption of rules, resolutions and reports, an affirmative vote of a majority of the members of each house shall be required.

"(4) Members of the committee shall be paid from the contingent expense funds of their respective houses in the same manner as provided for committee meetings when the Legislature is not in session, but only if specifically authorized by the Senate Rules Committee or the House Management Committee, as the case may be; however, no per diem or expense for attending meetings of the committee may be paid while the Legislature is in session. Members of the committee may receive per diem and expenses when the Legislature is in session but in recess under the terms of a concurrent resolution, or in recess during a special session, but only if specifically authorized by the Senate Rules Committee or the House Management Committee, as the case may be.

"(5) The committee shall make an initial report of its findings and recommendations to the Legislature not later than December 1, 2009. The committee shall continue in existence and study the issues specified under this section and shall make a report of its findings and recommendations not later than January

2011, including any recommended legislation. At the time of submission of its final report, the committee shall be dissolved.

"(6) (a) The Lieutenant Governor and the Speaker of the House of Representatives may jointly appoint not more than twelve (12) members to an advisory council to the joint committee. The members of the advisory committee appointed in 2009 shall continue to serve in 2010-2011 as long as the committee continues in existence.

"(b) The members of the advisory council shall either be engaged professionally in rendering mental health services or general medical services or be consumers of mental health services or representatives of those consumers.

"(c) The advisory council may meet with the Joint Legislative Study Committee and may hold special meetings as deemed necessary."

Laws of 2011, ch. 501, § 1, provides:

"SECTION 1. This act shall be known and may be cited as the 'Rose Isabel Williams Mental Health Reform Act of 2011.' "

The provisions of § 41-4-2, as enacted by Section 3 of Chapter 501, Laws of 2011, are identical to the provisions of this section as it appeared prior to amendment by Section 2 of Chapter 501, Laws of 2011.

Laws of 2014, ch. 480, § 1, as amended by Laws of 2018, ch. 449, § 4, provides:

"SECTION 1. (1) The Department of Finance and Administration is authorized to transfer and convey, by the methods specified in this section, certain real property that is located on Capers Avenue in the City of Jackson, Hinds County, Mississippi, and is more particularly described as follows:

"Starting at the concrete monument that is the SW corner of the SE ½ of the SW ½ of Section 33, T6N-R1E in the First Judicial District of Hinds County, Mississippi, and being also within the corporate limits of the City of Jackson, run thence due East along the line between Section 33, T6N-R1E and Section 4, T5N-R1E for a distance of 1138.85 feet to a concrete monument of the south right-of-way line of the Illinois Central Railroad, the point of beginning. Run thence S 42 degrees-03° E along said South right-of-way line of the Illinois Central Railroad for a distance of 134.45 feet to a concrete monument of the line between the land being described herein and Battle Hill Subdivision of the City of Jackson; run thence S 31 degrees-51° W along said line between the land being described herein and Battle Hill Subdivision of the City of Jackson for a distance of 430.48 feet to a point on the north line of Capers Avenue (Extended) as said avenue is now laid out and dedicated in the City of Jackson, Hinds County, Mississippi; run thence N 54 degrees-09° W along said north line of Capers Avenue (Extended) for a distance of 873.53 feet to the P.C. of a curve to the right with a radius (arc) of 536.19 feet; run thence along said curve and said north line of Capers Avenue (Extended) for a distance of 493.56 feet to the P.T. of said curve; run thence due north along the east line of Capers Avenue (Extended) for a distance of 478.86 feet to the P.C. of a curve to the right with a radius (arc) of 321.77 feet; run thence along said curve and said east line of Capers Avenue (Extended) for a distance of 176.59 feet to a point on the south right-of-way line of the Illinois Central Railroad; run thence S 42 degrees-01' 21" E along said South right-of-way line of the Illinois Central Railroad for a distance of 1661.56 feet to the point of beginning. All of the above described land being situated in the SE ¼ of the SW ¼ of Section 33, T6N-R1E and the NE ¼ of the NW ¼ of Section 4, T5N-R1E in the First Judicial District of Hinds County, Mississippi, and being wholly within the corporate limits of the City of Jackson and containing 18.35 acres, more or less.

"(2) The property described in subsection (1) of this section may be transferred and conveyed by either of the following methods:

"(a) If sold, the real property and the improvements thereon described in subsection (1) of this section shall be sold for not less than the current fair market value as determined by the average of at least two (2) appraisals by qualified appraisers, one (1) of which shall be selected by the Department of Finance and Administration, and both of whom shall be certified and licensed by the Mississippi Real Estate Appraiser Licensing and Certification Board;

"(b) If the real property described in subsection (1) of this section is unable to be sold as authorized under paragraph (a) of this subsection (2), the Department of Finance and Administration may conduct a public auction to dispose of such property. Upon a determination by the department that the property cannot be sold by bid at appraised value, the department shall thereafter publish notice of public auction in some newspaper of general circulation in the state for at least three (3) consecutive weeks after which the department can sell the property at public auction to the highest bidder; or

"(c) If a formal request for the property described in subsection (1) of this section is made by the Mayor and Council of the City of Jackson, Mississippi, before any such sale or auction authorized under paragraphs (a) and (b) of this subsection (2) occurs, the Department of Finance and Administration shall transfer and convey the property described herein upon receipt of a duly adopted resolution by the Mayor and Council of the City of Jackson, Mississippi, and spread upon its minutes, declaring their intention to request possession of the property.

"(3) The state shall retain all mineral rights in the property described in subsection (1) of this section.

"(4) The Department of Finance and Administration is vested with the authority to correct any discrepancies in the legal description of the property described in subsection (1) of this section.

"(5) Any monies derived from the sale or auction of the property described in subsection (1) in accordance with subsection (2)(a) or (b) of this section shall be deposited into the state land acquisition fund."

Laws of 2014, ch. 484, § 1 provides:

"SECTION 1. (1) The Mississippi Board of Mental Health, acting through the Mississippi Department of Mental Health, is authorized to sell to the Clarke College Alumni Association certain state-owned real property located at the Central Mississippi Residential Center in Newton County, Mississippi, for use as a Clarke College Alumni House, such property being more specifically described as follows:

"Start at the intersection of the West right-of-way line of Scanlan Street and the North right-of-way line of College Street, said point being 1295.24 feet North and 2084.32 feet East of the Southwest corner of Section 27, T6N, R11E, City of Newton, Newton County, Mississippi, and run thence North 06 degrees 02 minutes 03 seconds East, 130.89 feet along the West right-of-way line of Scanlan Street to the point of beginning: Thence run North 06 degrees 02 minutes 03 seconds East, 33.36 feet along the West right-of-way line of Scanlan Street; thence North 00 degrees 40 minutes 33 seconds East, 139.33 feet along the West right-of-way line of Scanlan Street to its intersection with the South right-of-way line of McMullan Avenue; thence North 89 degrees 32 minutes 43 seconds West, 251.47 feet along the South right-of-way line of McMullan Avenue; thence South 01 degree 42 minutes 37 seconds West, 172.58 feet; thence South 89 degrees 32 minutes 43 seconds East, 251.47 feet to the point of beginning. The herein described property is situated in the NE ¼ of the SW ¼ and the SE ¼ of the SW ¼ of the said Section 27 and contains 1.0 acre, more or less.

"This conveyance is made subject to any and all prior reservations or exceptions of oil, gas and minerals.

"(2) The real property and the improvements thereon described in subsection (1) of this section shall be sold for not less than the current fair market value as determined by the average of at least two (2) appraisals by qualified appraisers, one (1) of which shall be selected by the Department of Finance and Administration, and both of whom shall be certified and licensed by the Mississippi Real Estate Appraiser Licensing and Certification Board.

"(3) All monies derived from the sale of the property described in subsection (1) of this section shall be deposited into a special fund created in the State Treasury for the use and benefit of the Mississippi Department of Mental Health. Unexpended amounts remaining in the special fund at the end of the fiscal year shall not lapse into the State General Fund, and any interest earned on the amounts in the special fund shall be deposited to the credit of the special fund.

"(4) The Department of Finance and Administration may correct any discrepancies in the legal description provided in this section.

"(5) The State of Mississippi shall retain all mineral rights to the property sold under this section.

"(6) If at any time after the sale of the property described in subsection (1) of this section to the Clarke College Alumni Association, the property falls into a state of disrepair, is not properly maintained, or ceases to be used by such purchasing association for a reasonably significant period of time, the property shall revert to the Board of Mental Health for use by the Department of Mental Health.

"(7) This section shall stand repealed from and after July 1, 2016."

Cross References —

State board of mental health, acting through strategic planning and best practices committee, to Implement system of performance measures for services specified in subsection (2) of this section, see § 41-4-7.

State mental institutions generally, see §§ 41-17-1 et seq.

Mental retardation and illness centers, facilities and services, see §§ 41-19-1 et seq.

Annual operational plan required by § 41-4-7 to include listing of services specified in this section that will be provided and those that won't be provided, see § 41-19-33.

Drug abuse education programs, see § 41-29-169.

Research programs on misuse and abuse of controlled substances, see § 41-29-171.

Alcoholism and alcohol abuse prevention control and treatment, see §§ 41-30-1 et seq.

Commitment of alcoholics and drug addicts for treatment, see §§ 41-31-1 et seq.

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Practice References.
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Perlin, Mental Disability Law: Civil and Criminal, Second Edition (LexisNexis).

§ 41-4-2. Purpose of chapter.

The purpose of this chapter is to coordinate, develop, improve, plan for, and provide all services for persons of this state with mental illness, emotional disturbance, alcoholism, drug dependence, and an intellectual disability; to promote, safeguard and protect human dignity, social well-being and general welfare of these persons under the cohesive control of one (1) coordinating and responsible agency so that mental health and intellectual disability services and facilities may be uniformly provided more efficiently and economically to any resident of the State of Mississippi; and further to seek means for the prevention of these disabilities.

HISTORY:
Laws, 2011, ch. 501, § 3, eff from and after July 1, 2011.

Editor's Notes —
Laws of 2011, ch. 501, § 1, provides: "SECTION 1. This act shall be known and may be cited as the 'Rose Isabel Williams Mental Health Reform Act of 2011.' "

The provisions of this section as enacted by Section 3 of Chapter 501, Laws of 2011, are identical to the provisions of Section 41-4-1 as it appeared prior to amendment by Section 2 of Chapter 501, Laws of 2011.

§ 41-4-3. State Board of Mental Health.

(1) There is created a State Board of Mental Health, referred to in this chapter as "board," consisting of nine (9) members, to be appointed by the Governor, with the advice and consent of the Senate, each of whom shall be a qualified elector. One (1) member shall be appointed from each congressional district as presently constituted; and four (4) members shall be appointed from the state at large, one (1) of whom shall be a licensed medical doctor who is a psychiatrist, one (1) of whom shall hold a Ph.D. degree and be a licensed clinical psychologist, one (1) of whom shall be a licensed medical doctor, and one (1) of whom shall be a social worker with experience in the mental health field.

No more than two (2) members of the board shall be appointed from any one (1) congressional district as presently constituted.

Each member of the initial board shall serve for a term of years represented by the number of his congressional district; two (2) state at large members shall serve for a term of six (6) years; two (2) state at large members shall serve for a term of seven (7) years; subsequent appointments shall be for seven-year terms and the Governor shall fill any vacancy for the unexpired term.

The board shall elect a chairman whose term of office shall be one (1) year and until his successor shall be elected.

(2) Each board member shall be entitled to a per diem as is authorized by law and all actual and necessary expenses, including mileage as provided by law, incurred in the discharge of official duties.

(3) The board shall hold regular meetings quarterly and such special meetings deemed necessary, except that no action shall be taken unless there is present a quorum of at least five (5) members.

HISTORY:

Laws, 1974, ch. 567, § 2; Laws, 1980, ch. 560, § 16; Laws, 2010, ch. 548, § 11, eff from and after July 1, 2010.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in the first sentence of subsection (1). The word "advise" was changed to "advice" so that "...with the advise and consent of the Senate..." will read "...with the advice and consent of the Senate...". The Joint Committee ratified the correction at its June 3, 2003, meeting.

Cross References —

For provision authorizing uniform per diem compensation for officers and employees of state boards, commissions and agencies, see § 25-3-69.

State board of health, see §§ 41-3-1.1 et seq.

Duty of State Board of Mental Health to administer Hudspeth Retardation Center, see § 41-19-235.

Procedures for and individual's procedural and substantive rights during the initial involuntary commitment hearing and thereafter, see §§ 41-21-61 et seq.

OPINIONS OF THE ATTORNEY GENERAL

There is no statutory bar to appointment of individual to State Board of Mental Health to represent Fifth Congressional District when individual lived in Fifth District at time Section 41-4-3 was passed but currently resides in Fourth Congressional District. 1994 Miss. Op. Att'y Gen. 3.

RESEARCH REFERENCES

Practice References.

Health Care Administration Library (CD-ROM) (Matthew Bender).

Perlin, Mental Disability Law: Civil and Criminal, Second Edition (LexisNexis).

§ 41-4-5. State Department of Mental Health.

There is created the State Department of Mental Health, herein referred to as "department," which shall consist of four (4) or more divisions, among them the Division of Intellectual Disabilities, the Division of Alcohol and Drug Misuse, the Division of Mental Health, and the Division of Administration, Planning and Coordination, and such other divisions as the board deems appropriate.

HISTORY:

Laws, 1974, ch. 567, § 3; Laws, 2010, ch. 476, § 18, eff from and after passage (approved Apr. 1, 2010).

Cross References —

General functions of the division of alcohol and drug misuse, see §§ 41-30-1 et seq.

Assistance by Department of Mental Health in making relevant information available to Cooperative Extension Service for information clearinghouse assisting farmers, see § 69-2-5.

JUDICIAL DECISIONS

1. Service of process.

Although a state hospital and a state mental health department were established and controlled by Miss. Code Ann. § 41-4-11(2) and

Miss. Code Ann. § 41-4-5 and service of process was governed by Miss. R. Civ. P. 4(d)(5), requiring service upon the Attorney General, the entitles waived the defenses of insufficient process and insufficient service of process because even though the defenses were properly and timely raised in their answer to a wrongful death action, their subsequent participation in litigation and their failure to pursue the defenses for two years waived the defenses. East Miss. State Hosp. v. Adams, 947 So. 2d 887, 2007 Miss. LEXIS 13 (Miss. 2007).

RESEARCH REFERENCES

Practice References.

Health Care Administration Library (CD-ROM) (Matthew Bender).

Perlin, Mental Disability Law: Civil and Criminal, Second Edition (LexisNexis).

§ 41-4-7. Powers and duties of board [Paragraph (f) repealed effective July 1, 2017].

The State Board of Mental Health shall have the following powers and duties:

(a) To appoint a full-time Executive Director of the Department of Mental Health, who shall be employed by the board and shall serve as executive secretary to the board. The first director shall be a duly licensed physician with special interest and competence in psychiatry, and shall possess a minimum of three (3) years' experience in clinical and administrative psychiatry. Subsequent directors shall possess at least a master's degree or its equivalent, and shall possess at least ten (10) years' administrative experience in the field of mental health. The salary of the executive director shall be determined by the board;

(b) To appoint a Medical Director for the Department of Mental Health. The medical director shall provide clinical oversight in the implementation of evidence-based and best practices; provide clinical leadership in the integration of mental health, intellectual disability and addiction services with community partners in the public and private sectors; and provide oversight regarding standards of care. The medical director shall serve at the will and pleasure of the board, and will undergo an annual review of job performance and future service to the department;

(c) To cooperate with the Strategic Planning and Best Practices Committee created in Section 41-4-10, Mississippi Code of 1972, in establishing and implementing its state strategic plan;

(d) To develop a strategic plan for the development of services for persons with mental illness, persons with developmental disabilities and other clients of the public mental health system. Such strategic planning program shall require that the board, acting through the Strategic Planning and Best Practices Committee, perform the following functions respecting the delivery of services:

(i) Establish measures for determining the efficiency and effectiveness of the services specified in Section 41-4-1(2);

(ii) Conducting studies of community-based care in other jurisdictions to determine which services offered in these jurisdictions have the potential to provide the citizens of Mississippi with more effective and efficient community-based care;

(iii) Evaluating the efficiency and effectiveness of the services specified in Section 41-4-1(2);

(iv) Recommending to the Legislature by January 1, 2014, any necessary additions, deletions or other changes necessary to the services specified in Section 41-4-1(2);

(v) Implementing by July 1, 2012, a system of performance measures for the services specified in Section 41-4-1(2);

(vi) Recommending to the Legislature any changes that the department believes are necessary to the current laws addressing civil commitment;

(vii) Conducting any other activities necessary to the evaluation and study of the services specified in Section 41-4-1(2);

(viii) Assisting in conducting all necessary strategic planning for the delivery of all other services of the department. Such planning shall be conducted so as to produce a single strategic plan for the services delivered by the public mental health system and shall establish appropriate mission statements, goals, objectives and performance indicators for all programs and services of the public mental health system. For services other than those specified in Section 41-4-1(2), the committee shall recommend to the State Board of Mental Health a strategic plan that the board may adopt or modify;

(e) To set up state plans for the purpose of controlling and treating any and all forms of mental and emotional illness, alcoholism, drug misuse and developmental disabilities;

(f) To supervise, coordinate and establish standards for all operations and activities of the state related to mental health and providing mental health services. Nothing in this chapter shall preclude the services of a psychiatric/mental health nurse practitioner in accordance with an established nurse practitioner/physician protocol. A physician, licensed psychologist, psychiatric/mental health nurse practitioner in accordance with an established nurse practitioner/physician protocol, physician assistant, licensed professional counselor, licensed marriage and family therapists, or licensed clinical social worker shall certify each client's record annually after seeing the client in person or by telemedicine, and more often if medically indicated by physically visiting the client and certifying same in the record. The board shall have the authority to develop and implement all standards and plans and shall have the authority to establish appropriate actions, including financially punitive actions, to ensure enforcement of these established standards, in accordance with the Administrative Procedures Law (Section 25-43-1.101 et seq.). The regional community mental health/intellectual disability centers shall comply with all of the board's established standards that are applicable to those centers, and the board may withhold any state funds that otherwise would be allocated or paid to any of those centers that does not comply with the board's established standards. This paragraph (f) shall stand repealed on July 1, 2017;

(g) To enter into contracts with any other state or federal agency, or with any private person, organization or group capable of contracting, if it finds such action to be in the public interest;

(h) To collect reasonable fees for its services; however, if it is determined that a person receiving services is unable to pay the total fee, the department shall collect any amount such person is able to pay;

(i) To certify, coordinate and establish minimum standards and establish minimum required services, as specified in Section 41-4-1(2), for regional mental health and intellectual disability commissions and other community service providers for community or regional programs and services in adult mental health, children and youth mental health, intellectual disabilities, alcoholism, drug misuse, developmental disabilities, compulsive gambling, addictive disorders and related programs throughout the state. Such regional mental health and intellectual disability commissions and other community service providers shall, on or before July 1 of each year, submit an annual operational plan to the State Department of Mental Health for approval or disapproval based on the minimum standards and minimum required services established by the department for certification and itemize the services specified in Section 41-4-1(2). As part of the annual operation plan required by this paragraph (i) submitted by any regional community mental health center or by any other reasonable certification deemed acceptable by the department, the community mental health center shall state those services specified in Section 41-4-1(2) that it will provide and also those services that it will not provide. If the department finds deficiencies in the plan of any regional commission or community service provider based on the minimum standards and minimum required services established for certification, the department shall give the regional commission or community service provider a six-month probationary period to bring its standards and services up to the established minimum standards and minimum required services. After the six-month probationary period, if the department determines that the regional commission or community service provider still does not meet the minimum standards and minimum required services established for certification, the department may remove the certification of the commission or provider and from and after July 1, 2011, the commission or provider shall be ineligible for state funds from Medicaid reimbursement or other funding sources for those services. However, the department shall not mandate a standard or service, or decertify a regional commission or community service provider for not meeting a standard or service, if the standard or service does not have funding appropriated by the Legislature or have a state, federal or local funding source identified by the department. No county shall be required to levy millage to provide a mandated standard or service above the minimum rate required by Section 41-19-39. After the six-month probationary period, the department may identify an appropriate community service provider to provide any core services in that county that are not provided by a community mental health center. However, the department shall not offer reimbursement or other accommodations to a community service provider of core services that were not offered to the decertified community mental health center for the same or similar services. The State Board of Mental Health shall promulgate rules and regulations necessary to implement the provisions of this paragraph (i), in accordance with the Administrative Procedures Law (Section 25-43-1.101 et seq.);

(j) To establish and promulgate reasonable minimum standards for the construction and operation of state and all Department of Mental Health certified facilities, including reasonable minimum standards for the admission, diagnosis, care, treatment, transfer of patients and their records, and also including reasonable minimum standards for providing day care, outpatient care, emergency care, inpatient care and follow-up care, when such care is provided for persons with mental or emotional illness, an intellectual disability, alcoholism, drug misuse and developmental disabilities;

(k) To implement best practices for all services specified in Section 41-4-1(2), and to establish and implement all other services delivered by the Department of Mental Health. To carry out this responsibility, the board shall require the department to establish a division responsible for developing best practices based on a comprehensive analysis of the mental health environment to determine what the best practices for each service are. In developing best practices, the board shall consider the cost and benefits associated with each practice with a goal of implementing only those practices that are cost-effective practices for service delivery. Such best practices shall be utilized by the board in establishing performance standards and evaluations of the community mental health centers' services required by paragraph (d) of this section;

(*l*) To assist community or regional programs consistent with the purposes of this chapter by making grants and contracts from available funds;

(m) To establish and collect reasonable fees for necessary inspection services incidental to certification or compliance;

(n) To accept gifts, trusts, bequests, grants, endowments or transfers of property of any kind;

(o) To receive monies coming to it by way of fees for services or by appropriations;

(p) To serve as the single state agency in receiving and administering any and all funds available from any source for the purpose of service delivery, training, research and education in regard to all forms of mental illness, intellectual disabilities, alcoholism, drug misuse and developmental disabilities, unless such funds are specifically designated to a particular agency or institution by the federal government, the Mississippi Legislature or any other grantor;

(q) To establish mental health holding centers for the purpose of providing short-term emergency mental health treatment, places for holding persons awaiting commitment proceedings or awaiting placement in a state mental health facility following commitment, and for diverting placement in a state mental health facility. These mental health holding facilities shall be readily accessible, available statewide, and be in compliance with emergency services' minimum standards. They shall be comprehensive and available to triage and make appropriate clinical disposition, including the capability to access inpatient services or less restrictive alternatives, as needed, as determined by medical staff. Such facility shall have medical, nursing and behavioral services available on a twenty-four-hour-a-day basis. The board may provide for all or part of the costs of establishing and operating the holding centers in each district from such funds as may be appropriated to the board for such use, and may participate in any plan or agreement with any public or private entity under which the entity will provide all or part of the costs of establishing and operating a holding center in any district;

(r) To certify/license case managers, mental health therapists, intellectual disability therapists, mental health/intellectual disability program administrators, addiction counselors and others as deemed appropriate by the board. Persons already professionally licensed by another state board or agency are not required to be certified/licensed under this section by the Department of Mental Health. The department shall not use professional titles in its certification/licensure process for which there is an independent licensing procedure. Such certification/licensure shall be valid only in the state mental health system, in programs funded and/or certified by the Department of Mental Health, and/or in programs certified/licensed by the State Department of Health that are operated by the state mental health system serving persons with mental illness, an intellectual disability, a developmental disability or addictions, and shall not be transferable;

(s) To develop formal mental health worker qualifications for regional mental health and intellectual disability commissions and other community service providers. The State Personnel Board shall develop and promulgate a recommended salary scale and career ladder for all regional mental health/intellectual disability center therapists and case managers who work directly with clients. The State Personnel Board shall also develop and promulgate a career ladder for all direct care workers employed by the State Department of Mental Health;

(t) The employees of the department shall be governed by personnel merit system rules and regulations, the same as other employees in state services;

(u) To establish such rules and regulations as may be necessary in carrying out the provisions of this chapter, including the establishment of a formal grievance procedure to investigate and attempt to resolve consumer complaints;

(v) To grant easements for roads, utilities and any other purpose it finds to be in the public interest;

(w) To survey statutory designations, building markers and the names given to mental health/intellectual disability facilities and proceedings in order to recommend deletion of obsolete and offensive terminology relative to the mental health/intellectual disability system. Based upon a recommendation of the executive director, the board shall have the authority to name/rename any facility operated under the auspices of the Department of Mental Health for the sole purpose of deleting such terminology;

(x) To ensure an effective case management system directed at persons who have been discharged from state and private psychiatric hospitals to ensure their continued well-being in the community;

(y) To develop formal service delivery standards designed to measure the quality of services delivered to community clients, as well as the timeliness of services to community clients provided by regional mental health/intellectual disability commissions and other community services providers;

(z) To establish regional state offices to provide mental health crisis intervention centers and services available throughout the state to be utilized on a case-by-case emergency basis. The regional services director, other staff and delivery systems shall meet the minimum standards of the Department of Mental Health;

(aa) To require performance contracts with community mental health/ intellectual disability service providers to contain performance indicators to measure successful outcomes, including diversion of persons from inpatient psychiatric hospitals, rapid/timely response to emergency cases, client satisfaction with services and other relevant performance measures;

(bb) To enter into interagency agreements with other state agencies, school districts and other local entities as determined necessary by the department to ensure that local mental health service entities are fulfilling their responsibilities to the overall state plan for behavioral services;

(cc) To establish and maintain a toll-free grievance reporting telephone system for the receipt and referral for investigation of all complaints by clients of state and community mental health/intellectual disability facilities;

(dd) To establish a peer review/quality assurance evaluation system that assures that appropriate assessment, diagnosis and treatment is provided according to established professional criteria and guidelines;

(ee) To develop and implement state plans for the purpose of assisting with the care and treatment of persons with Alzheimer's disease and other dementia. This plan shall include education and training of service providers, caregivers in the home setting and others who deal with persons with Alzheimer's disease and other dementia, and development of adult day care, family respite care and counseling programs to assist families who maintain persons with Alzheimer's disease and other dementia in the home setting. No agency shall be required to provide any services under this section until such time as sufficient funds have been appropriated or otherwise made available by the Legislature specifically for the purposes of the treatment of persons with Alzheimer's and other dementia;

(ff) Working with the advice and consent of the administration of Ellisville State School, to enter into negotiations with the Economic Development Authority of Jones County for the purpose of negotiating the possible exchange, lease or sale of lands owned by Ellisville State School to the Economic Development Authority of Jones County. It is the intent of the Mississippi Legislature that such negotiations shall ensure that the financial interest of the persons with an intellectual disability served by Ellisville State School will be held paramount in the course of these negotiations. The Legislature also recognizes the importance of economic development to the citizens of the State of Mississippi and Jones County, and encourages fairness to the Economic Development Authority of Jones County. Any negotiations proposed which would result in the recommendation for exchange, lease or sale of lands owned by Ellisville State School must have the approval of the State Board of Mental Health. The State Board of Mental Health may and has the final authority as to whether or not these negotiations result in the exchange, lease or sale of the properties it currently holds in trust for persons with an intellectual disability served at Ellisville State School.

If the State Board of Mental Health authorizes the sale of lands owned by Ellisville State School, as provided for under this paragraph (ff), the monies derived from the sale shall be placed into a special fund that is created in the State Treasury to be known as the "Ellisville State School Client's Trust Fund." The principal of the trust fund shall remain inviolate and shall never be expended. Any interest earned on the principal may be expended solely for the benefits of clients served at Ellisville State School. The State Treasurer shall invest the monies of the trust fund in any of the investments authorized for the Mississippi Prepaid Affordable College Tuition Program under Section 37-155-9, and those investments shall be subject to the limitations prescribed by Section 37-155-9. Unexpended amounts remaining in the trust fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in the trust fund shall be deposited to the credit of the trust fund. The administration of Ellisville State School may use any interest earned on the principal of the trust fund, upon appropriation by the Legislature, as needed for services or facilities by the clients of Ellisville State School. Ellisville State School shall make known to the Legislature, through the Legislative Budget Committee and the respective Appropriations Committees of the House and Senate, its proposed use of interest earned on the principal of the trust fund for any fiscal year in which it proposes to make expenditures thereof. The State Treasurer shall provide Ellisville State School with an annual report on the Ellisville State School Client's Trust Fund to indicate the total monies in the trust fund, interest earned during the year, expenses paid from the trust fund and such other related information.

Nothing in this section shall be construed as applying to or affecting mental health/intellectual disability services provided by hospitals as defined in Section 41-9-3(a), and/or their subsidiaries and divisions, which hospitals, subsidiaries and divisions are licensed and regulated by the Mississippi State Department of Health unless such hospitals, subsidiaries or divisions voluntarily request certification by the Mississippi State Department of Mental Health.

All new programs authorized under this section shall be subject to the availability of funds appropriated therefor by the Legislature;

(gg) Working with the advice and consent of the administration of Boswell Regional Center, to enter into negotiations with the Economic Development Authority of Simpson County for the purpose of negotiating the possible exchange, lease or sale of lands owned by Boswell Regional Center to the Economic Development Authority of Simpson County. It is the intent of the Mississippi Legislature that such negotiations shall ensure that the financial interest of the persons with an intellectual disability served by Boswell Regional Center will be held paramount in the course of these negotiations. The Legislature also recognizes the importance of economic development to the citizens of the State of Mississippi and Simpson County, and encourages fairness to the Economic Development Authority of Simpson County. Any negotiations proposed which would result in the recommendation for exchange, lease or sale of lands owned by Boswell Regional Center must have the approval of the State Board of Mental Health. The State Board of Mental Health may and has the final authority as to whether or not these negotiations result in the exchange, lease or sale of the properties it currently holds in trust for persons with an intellectual disability served at Boswell Regional Center. In any such exchange, lease or sale of such lands owned by Boswell Regional Center, title to all minerals, oil and gas on such lands shall be reserved, together with the right of ingress and egress to remove same, whether such provisions be included in the terms of any such exchange, lease or sale or not.

If the State Board of Mental Health authorizes the sale of lands owned by Boswell Regional Center, as provided for under this paragraph (gg), the monies derived from the sale shall be placed into a special fund that is created in the State Treasury to be known as the “Boswell Regional Center Client’s Trust Fund.” The principal of the trust fund shall remain inviolate and shall never be expended. Any earnings on the principal may be expended solely for the benefits of clients served at Boswell Regional Center. The State Treasurer shall invest the monies of the trust fund in any of the investments authorized for the Mississippi Prepaid Affordable College Tuition Program under Section 37-155-9, and those investments shall be subject to the limitations prescribed by Section 37-155-9. Unexpended amounts remaining in the trust fund at the end of a fiscal year shall not lapse into the State General Fund, and any earnings on amounts in the trust fund shall be deposited to the credit of the trust fund. The administration of Boswell Regional Center may use any earnings on the principal of the trust fund, upon appropriation by the Legislature, as needed for services or facilities by the clients of Boswell Regional Center. Boswell Regional Center shall make known to the Legislature, through the Legislative Budget Committee and the respective Appropriations Committees of the House and Senate, its proposed use of the earnings on the principal of the trust fund for any fiscal year in which it proposes to make expenditures thereof. The State Treasurer shall provide Boswell Regional Center with an annual report on the Boswell

Regional Center Client's Trust Fund to indicate the total monies in the trust fund, interest and other income earned during the year, expenses paid from the trust fund and such other related information.

Nothing in this section shall be construed as applying to or affecting mental health/intellectual disability services provided by hospitals as defined in Section 41-9-3(a), and/or their subsidiaries and divisions, which hospitals, subsidiaries and divisions are licensed and regulated by the Mississippi State Department of Health unless such hospitals, subsidiaries or divisions voluntarily request certification by the Mississippi State Department of Mental Health.

All new programs authorized under this section shall be subject to the availability of funds appropriated therefor by the Legislature;

(hh) Notwithstanding any other section of the code, the Board of Mental Health shall be authorized to fingerprint and perform a criminal history record check on every employee or volunteer. Every employee and volunteer shall provide a valid current social security number and/or driver's license number which shall be furnished to conduct the criminal history record check. If no disqualifying record is identified at the state level, fingerprints shall be forwarded to the Federal Bureau of Investigation for a national criminal history record check;

(ii) The Department of Mental Health shall have the authority for the development of a consumer friendly single point of intake and referral system within its service areas for persons with mental illness, an intellectual disability, developmental disabilities or alcohol or substance abuse who need assistance identifying or accessing appropriate services. The department will develop and implement a comprehensive evaluation procedure ensuring that, where appropriate, the affected person or their parent or legal guardian will be involved in the assessment and planning process. The department, as the point of intake and as service provider, shall have the authority to determine the appropriate institutional, hospital or community care setting for persons who have been diagnosed with mental illness, an intellectual disability, developmental disabilities and/or alcohol or substance abuse, and may provide for the least restrictive placement if the treating professional believes such a setting is appropriate, if the person affected or their parent or legal guardian wants such services, and if the department can do so with a reasonable modification of the program without creating a fundamental alteration of the program. The least restrictive setting could be an institution, hospital or community setting, based upon the needs of the affected person or their parent or legal guardian;

(jj) To have the sole power and discretion to enter into, sign, execute and deliver long-term or multiyear leases of real and personal property owned by the Department of Mental Health to and from other state and federal agencies and private entities deemed to be in the public's best interest. Any monies derived from such leases shall be deposited into the funds of the Department of Mental Health for its exclusive use. Leases to private entities shall be approved by the Department of Finance and Administration and all leases shall be filed with the Secretary of State;

(kk) To certify and establish minimum standards and minimum required services for county facilities used for housing, feeding and providing medical treatment for any person who has been involuntarily ordered admitted to a treatment center by a court of competent jurisdiction. The minimum standard for the initial assessment of those persons being housed in county facilities is for the assessment to be performed by a physician, preferably a psychiatrist, or by a nurse practitioner, preferably a psychiatric nurse practitioner. If the department finds deficiencies in any such county facility or its provider based on the minimum standards and minimum required services established for certification, the department shall give the county or its provider a six-month probationary period to bring its standards and services up to the established minimum standards and minimum required services. After the six-month probationary period, if the department determines that the county or its provider still does not meet the minimum standards and minimum required services, the department may remove the certification of the county or provider and require the county to contract with another county having a certified facility to hold those persons for that period of time pending transportation and admission to a state treatment facility. Any cost incurred by a county receiving an involuntarily committed person from a county with a decertified holding facility shall be reimbursed by the home county to the receiving county.

HISTORY:

Laws, 1974, ch. 567, § 4; Laws, 1978, ch. 388, § 1; Laws, 1996, ch. 446, § 1; Laws, 1997, ch. 328, § 1; Laws, 1997, ch. 384, § 1; Laws, 1997, ch. 587, § 2; Laws, 1998, ch. 329, § 1; Laws, 1998, ch. 341, § 1; Laws, 1999, ch. 342, § 1; Laws, 2001, ch. 601, § 1; Laws, 2002, ch. 357, § 1; Laws, 2003, ch. 371, § 1; Laws, 2003, ch. 438, § 1; Laws, 2004, ch. 517, § 1; Laws, 2005, ch. 387, § 1; Laws, 2008, ch. 523, § 1; Laws, 2009, ch. 543, § 1; Laws, 2010, ch. 476, § 19; Laws, 2010, ch. 499, § 1; Laws, 2011, ch. 501, § 4; Laws, 2012, ch. 509, § 1; Laws, 2013, ch. 549, § 1, eff from and after July 1, 2013.

Joint Legislative Committee Note —

Section 1 of ch. 329, Laws, 1998, effective July 1, 1998, amended this section. Section 1 of ch. 341, Laws, 1998, effective July 1, 1998, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the May 20, 1998, meeting of the Committee.

Section 1 of ch. 371, Laws, 2003, effective from and after July 1, 2003 (approved March 13, 2003), amended this section. Section 1 of ch. 438, Laws, 2003, effective from and after July 1, 2003 (approved March 18, 2003), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-3-79 which gives the Joint Legislative Committee on Compilation, Revision, and Publication authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication ratified the integration of these amendments as consistent with the legislative intent at the June 3, 2003, meeting of the Committee.

Section 19 of ch. 476, Laws of 2010, effective upon passage (approved April 1, 2010), amended this section. Section 1 of ch. 499, Laws of 2010, effective July 1, 2010 (approved April 7, 2010), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 499, Laws of 2010, which contains language that specifically provides that it supersedes § 41-4-7 as amended by Chapter 476, Laws of 2010.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in the fourth sentence of

(f) by substituting "Section 25-43-1.101 et seq." for "Section 25-43-1 et seq." The Joint Committee ratified the correction at its August 1, 2013, meeting.

Editor's Notes —

The preamble and § 1 of Laws of 2007, ch. 456, provide:

"WHEREAS, autism is a complex developmental disability that typically appears during the first three (3) years of life and is part of a group of disorders known as Autism Spectrum Disorders (ASD); and

"WHEREAS, as of the effective date of this act [March 26, 2007], at least one (1) in one hundred sixty-six (166) individuals in the United States is diagnosed with autism, making it more common than the occurrences in our population of pediatric cancer, diabetes, and AIDS combined; and

"WHEREAS, autism impairs a person's ability to communicate and relate to others; is associated with rigid routines and repetitive behaviors, such as obsessively arranging objects or following very specific routines; is four (4) times more likely to strike boys than girls; and occurs in all racial, ethnic and social groups; and

"WHEREAS, symptoms of the disability can range from very mild to quite severe, and autistic behaviors not only make life difficult for those individuals who suffer from the disability, but also make life hard for their families, health care providers and teachers; and

"WHEREAS, families coping with this devastating illness are searching for answers about its causes, diagnosis, prevention and treatment, and while there is no known means to prevent the disability, there are indications that early intervention in an appropriate educational setting for at least two (2) years during the preschool years can result in significant improvements for many young children with the disorder; and

"WHEREAS, the Mississippi Legislature recognizes that strategies for how to best identify, treat and accommodate the needs of individuals with autism and of their families are urgently needed in our state; NOW, THEREFORE,"

"SECTION 1. (1) The Caring for Mississippi Individuals with Autism Task Force is created to study and make recommendations to the Mississippi Legislature regarding the growing incidence of autism and Autism Spectrum Disorders (ASD), how to identify, treat and accommodate the needs of individuals with autism and ASD, and ways to improve the delivery and coordination of state services provided to individuals with autism and ASD. Members of the task force shall be composed of the following:

"(a) Three (3) persons who are the parents of children with autism or ASD, with one (1) such person to be appointed by the Governor, one (1) to be appointed by the Lieutenant Governor, and one (1) to be appointed by the Speaker of the House;

"(b) One (1) person who is a member of the governing body of a school district, to be appointed by the State Superintendent of Public Education;

"(c) One (1) person who represents the State Department of Education, to be appointed by the State Superintendent of Public Education;

"(d) One (1) person who is the director of special education services in a school district, to be appointed by the State Superintendent of Public Education;

"(e) One (1) person who is a representative of the State Department of Mental Health, to be appointed by the executive director of the department;

"(f) Three (3) persons who are representatives of the State Department of Mental Health who are from regions in the state that provide services to individuals with autism or ASD, to be appointed by the executive director of the department;

"(g) One (1) person who is a representative of the University of Mississippi Medical Center and who provides medical or other services to individuals with autism or ASD, to be appointed by the Vice Chancellor of the University of Mississippi Medical Center;

"(h) Two (2) persons who are Mississippi pediatricians engaged in the private practice of medicine and who provide treatment to individuals with autism or ASD, to be appointed by the Vice Chancellor of the University of Mississippi Medical Center;

"(i) Two (2) persons who are licensed therapists appointed by the President of the Mississippi Speech Language and Hearing Association.

"(2) The task force shall:

"(a) Review the best practices of other states with regard to educational, medical and early intervention services provided to individuals diagnosed with autism or ASD and identify the best practices of other states;

"(b) Review the standard of services provided by local Mississippi school districts and early intervention programs to individuals diagnosed with autism or ASD, identify any additional potential funding sources for school districts, and identify guidelines for measurable educational and instructional goals that can be used by members of the education community for serving children with autism or ASD;

"(c) Assess the medical availability of services currently provided for early screening, diagnosis and treatment of autism and ASD and provide recommendations for enhancing medical services;

"(d) Identify the role of higher education in developing a workforce in Mississippi possessing the skills necessary to assist individuals with autism or ASD in medical, educational, and vocational efforts or in providing additional services associated with autism or ASD;

"(e) Evaluate and identify any and all additional relevant information and make legislative recommendations regarding the development and implementation of a continuum of educational and medical services for individuals with autism or ASD; and

"(f) File a report with those standing committees of the Mississippi State Legislature and with those state agencies having jurisdiction over specific recommendations of the task force, not later than December 1, 2007.

"(3) The task force shall hold its first meeting not later than April 1, 2007, with the date, time and location of the meeting to be designated by the Governor. At that first meeting, the task force shall elect from among its membership a chairman, vice chairman and any other officers determined to be necessary, and shall set the date, time and location of its next meeting.

"(4) The State Department of Mental Health shall provide the staff and other support necessary for the Caring for Mississippi Individuals with Autism Task Force to perform its duties."

Laws of 2011, ch. 447, § 2, provides:

"SECTION 2. The State Board of Mental Health shall convey without compensation to the Mississippi Transportation Commission all of its right, title and interest in certain real property hereinafter labeled as Warranty, and also shall convey without compensation that certain real property for a temporary easement, hereinafter labeled as Temporary Easement, both conveyances being located in Rankin County, Mississippi, described more specifically as follows:

"WARRANTY

"INDEXING INSTRUCTIONS: Southeast ¼ of the Northwest ¼ and the Southwest ¼ of the Northeast ¼ of Section 35, Township 5 North, Range 2 East, Rankin County, Mississippi.

"Parcel No. 1

"Commence at a found ⅜″ rebar marking the Northeast corner of Section 35, Township 5 North, Range 2 East, Rankin County, Mississippi, having grid coordinates N=996596.77460, E=2382140.83400, and run South 62 degrees 40 minutes 14 seconds West a distance of 3,848.56 feet to a point being located 80 feet left of, as measured perpendicularly from, the project centerline of S.R. 468 at station 22+00 as shown on the right-of-way acquisition map for Federal Aid Project No. (105414/201000), said point being the Point of Beginning for the following description:

"• From said Point of Beginning run South 73 degrees 33 minutes 29 seconds East along the northern proposed right-of-way line of S.R. 468 a distance of 1,300.00 feet to a point being located 80 feet left of, as measured perpendicularly from, the project centerline of S.R. 468 at station 35+00;

"• Thence continue South 51 degrees 45 minutes 24 seconds East along said northern proposed right-of-way line a distance of 107.70 feet to the northern present right-of-way line of S.R. 468 and to a point being located 40 feet left of, as measured perpendicularly from, the project centerline of S.R. 468 at station 36+00;

"• Thence North 73 degrees 33 minutes 29 seconds West along said northern present right-of-way line a distance of 1,500.00 feet to said northern proposed right-of-way line of S.R. 468 and to a point being located 40 feet left of, as measured perpendicularly from, the project centerline of S.R. 468 at station 21+00;

"• Thence North 84 degrees 38 minutes 25 seconds East along said northern proposed right-of-way line a distance of 107.70 feet to the Point of Beginning.

"The above-described parcel of land contains 1.26 acres (56,000 sq. ft.), more or less, and is situated in the Southeast ¼ of the Northwest ¼ and the Southwest ¼ of the Northeast ¼ of Section 35, Township 5 North, Range 2 East, Rankin County, Mississippi.

"Parcel No. 2

"Commence at a found ⅜″ rebar marking the Northeast corner of Section 35, Township 5 North, Range 2 East, Rankin County, Mississippi, having grid coordinates N=996596.77460, E=2382140.83400, and run South 57 degrees 08 minutes 24 seconds West a distance of 3,801.81 feet to a point being located 140 feet right of, as measured perpendicularly from, the project centerline of S.R. 468 at station 25+00 as shown on the right-of-way acquisition map for Federal Aid Project No. (105414/201000), said point being the Point of Beginning for the following description:

"• From said Point of Beginning run North 59 degrees 31 minutes 19 seconds West along the southern proposed right-of-way line of S.R. 468 a distance of 412.31 feet to the southern present right-of-way line of S.R. 468 and to a point being located 40 feet right of, as measured perpendicularly from, the project centerline of S.R. 468 at station 21+00;

"• Thence South 73 degrees 33 minutes 29 seconds East along said southern present right-of-way line a distance of 1,500.00 feet to said southern proposed right-of-way line of S.R. 468 and to a point being located 40 feet right of, as measured perpendicularly from, the project centerline of S.R. 468 at station 36+00;

"• Thence South 88 degrees 00 minutes 25 seconds West along said northern proposed right-of-way line a distance of 316.23 feet to a point being located 140 feet right of, as measured perpendicularly from, the project centerline of S.R. 468 at station 33+00;

"• Thence continue North 73 degrees 33 minutes 29 seconds West along said southern proposed right-of-way line a distance of 800.00 feet to the Point of Beginning.

"The above-described parcel of land contains 2.64 acres (115,000 sq. ft.), more or less, and is situated in the Southeast ¼ of the Northwest ¼ and the Southwest ¼ of the Northeast ¼ of Section 35, Township 5 North, Range 2 East, Rankin County, Mississippi.

"Parcel No. 1 and Parcel No. 2 contain an aggregate of 3.90 acres (171,000 sq. ft.), more or less.

"TEMPORARY EASEMENT

"INDEXING INSTRUCTIONS: Southeast ¼ of the Northwest ¼ and the Southwest ¼ of the Northeast ¼ of Section 35, Township 5 North, Range 2 East, Rankin County, Mississippi.

"Parcel No. 1

"Commence at a found ⅜″ rebar marking the Northeast corner of Section 35, Township 5 North, Range 2 East, Rankin County, Mississippi, having grid coordinates N=996596.77460, E=2382140.83400, and run South 61 degrees 08 minutes 25 seconds West a distance of 3,646.09 feet to a point on the temporary easement, said point being located 150.65 feet left of, as measured perpendicularly from, the project centerline of S.R. 468 at station 24+14.50 as shown on the right-of-way acquisition map for Federal Aid Project No. (105414/201000), said point being the Point of Beginning for the following description:

"• From said Point of Beginning run South 73 degrees 33 minutes 29 seconds East along said easement line a distance of 353.71 feet to a point being located 150.65 feet left of, as measured perpendicularly from, the project centerline of S.R. 468 at station 27+68.21;

"• Thence continue South 16 degrees 26 minutes 31 seconds West along said easement line a distance of 70.65 feet to the northern proposed right-of-way line of S.R. 468 and to a point being located 80 feet left of, as measured perpendicularly from, the project centerline of S.R. 468 at station 27+68.21;

"• Thence North 73 degrees 33 minutes 29 seconds West along said northern proposed right-of-way line a distance of 353.71 feet to a point on said easement line, said point being located 80 feet left of, as measured perpendicularly from, the project centerline of S.R. 468 at station 24+14.50;

"• Thence on and along said easement line, North 16 degrees 26 minutes 31 seconds East a distance of 70.65 feet to the Point of Beginning.

"The above-described parcel of land contains 0.57 acres (24,990 sq. ft.), more or less, and is situated in the Southeast ¼ of the Northwest ¼ of Section 35, Township 5 North, Range 2 East, Rankin County, Mississippi.

"Parcel No. 2

"Commence at a found ⅜″ rebar marking the Northeast corner of Section 35, Township 5 North, Range 2 East, Rankin County, Mississippi, having grid coordinates N=996596.77460, E=2382140.83400, and run South 55 degrees 31 minutes 19 seconds West a distance of 3,305.53 feet to a point on the temporary easement, said point being located 176.40 feet left of, as measured perpendicularly from, the project centerline of S.R. 468 at station 28+95.24 as shown on the right-of-way acquisition map for Federal Aid Project No. (105414/201000), said point being the Point of Beginning for the following description:

"• From said Point of Beginning run South 73 degrees 33 minutes 29 seconds East along said easement line a distance of 290.26 feet to a point being located 176.40 feet left of, as measured perpendicularly from, the project centerline of S.R. 468 at station 31+85.50;

"• Thence continue South 16 degrees 26 minutes 31 seconds West along said easement line a distance of 96.40 feet to the northern proposed right-of-way line of S.R. 468 and to a point being located 80 feet left of, as measured perpendicularly from, the project centerline of S.R. 468 at station 31+85.50;

"• Thence North 73 degrees 33 minutes 29 seconds West along said northern proposed right-of-way line a distance of 290.26 feet to a point on said easement line, said point being located 80 feet left of, as measured perpendicularly from, the project centerline of S.R. 468 at station 28+95.24;

"• Thence on and along said easement line, North 16 degrees 26 minutes 31 seconds East a distance of 96.40 feet to the Point of Beginning.

"The above-described parcel of land contains 0.64 acres (27,981 sq. ft.), more or less, and is situated in the Southeast ¼ of the Northwest ¼ and the Southwest ¼ of the Northeast ¼ of Section 35, Township 5 North, Range 2 East, Rankin County, Mississippi.

"Parcel No. 3

"Commence at a found ⅜″ rebar marking the Northeast corner of Section 35, Township 5 North, Range 2 East, Rankin County, Mississippi, having grid coordinates N=996596.77460, E=2382140.83400, and run South 57 degrees 02 minutes 11 seconds West a distance of 3,941.24 feet to a point on the temporary easement, said point being located 250.36 feet right of, as measured perpendicularly from, the project centerline of S.R. 468 at station 24+14.50 as shown on the right-of-way acquisition map for Federal Aid Project No. (105414/201000), said point being the Point of Beginning for the following description:

"• From said Point of Beginning run North 16 degrees 26 minutes 31 seconds East along said easement line a distance of 131.73 feet to the southern present right-of-way line of S.R. 468 and to a point being located 118.63 feet right of, as measured perpendicularly from, the project centerline of S.R. 468 at station 24+14.50;

"• Thence South 59 degrees 31 minutes 30 seconds East along said southern present right-of-way line a distance of 88.13 feet;

"• Thence continue South 73 degrees 33 minutes 29 seconds East along said southern present right-of-way line a distance of 240.56 feet to a point on said easement line, said point being located 140 feet right of, as measured perpendicularly from, the project centerline of S.R. 468 at station 27+40.56;

"• Thence on and along said easement line, South 16 degrees 26 minutes 31 seconds West a distance of 110.36 feet to a point being located 250.36 feet right of, as measured perpendicularly from, the project centerline of S.R. 468 at station 27+40.56;

"• Thence continue on and along said easement line, North 73 degrees 33 minutes 29 seconds West a distance of 326.06 feet to the Point of Beginning.

"The above-described parcel of land contains 0.85 acres (36,898 sq. ft.), more or less, and is situated in the Southeast ¼ of the Northwest ¼ of Section 35, Township 5 North, Range 2 East, Rankin County, Mississippi.

"Parcel No. 4

"Commence at a found ⅜″ rebar marking the Northeast corner of Section 35, Township 5 North, Range 2 East, Rankin County, Mississippi, having grid coordinates N=996596.77460, E=2382140.83400, and run South 51 degrees 32 minutes 56 seconds West a distance of 3,658.14 feet to a point on the temporary easement, said point being located 250.29 feet right of, as measured perpendicularly from, the project centerline of S.R. 468 at station 28+75.25 as shown on the right-of-way acquisition map for Federal Aid Project No. (105414/201000), said point being the Point of Beginning for the following description:

"• From said Point of Beginning run North 16 degrees 26 minutes 31 seconds East along said easement line a distance of 110.29 feet to the southern present right-of-way line of S.R. 468 and to a point being located 140 feet right of, as measured perpendicularly from, the project centerline of S.R. 468 at station 28+75.25;

"• Thence South 73 degrees 33 minutes 29 seconds East along said southern present right-of-way line a distance of 310.25 feet to a point on said easement line, said point being located 140 feet right of, as measured perpendicularly from, the project centerline of S.R. 468 at station 31+85.50;

"• Thence on and along said easement line, South 16 degrees 26 minutes 31 seconds West a distance of 110.29 feet to a point being located 250.29 feet right of, as measured perpendicularly from, the project centerline of S.R. 468 at station 31+85.50;

"• Thence continue on and along said easement line, North 73 degrees 33 minutes 29 seconds West a distance of 310.25 feet to the Point of Beginning.

"The above-described parcel of land contains 0.79 acres (34,217 sq. ft.), more or less, and is situated in the Southeast ¼ of the Northwest ¼ of Section 35, Township 5 North, Range 2 East, Rankin County, Mississippi.

"Parcel No. 1, Parcel No. 2, Parcel No. 3 and Parcel No. 4 contain an aggregate of 2.85 acres (124,086 sq. ft.), more or less."

Laws of 2011, ch. 501, § 1, effective July 1, 2011, provides:

"SECTION 1. This act shall be known and may be cited as the 'Rose Isabel Williams Mental Health Reform Act of 2011.'"

Section 41-4-10, referred to in (c), was repealed by its own terms, effective July 1, 2017.

Laws of 2018, ch. 449, § 1, effective July 1, 2018, provides:

"SECTION 1. "(1) The Mississippi Board of Mental Health, acting through the Mississippi Department of Mental Health, is authorized to sell certain state-owned real property and any improvements thereon, which served as the former Waveland group home property located in the City of Waveland, Hancock County, Mississippi, such property being more specifically described as follows:

[For a complete description of the property, see Section 1 of Chapter 449, Laws of 2018.]

"(2) The real property and any improvements thereon described in subsection (1) of this section shall be sold for not less than the current fair market value as determined by the average of at least two (2) appraisals by qualified appraisers, one (1) of which shall be selected by the Department of Finance and Administration, and both of whom shall be certified and licensed by the Mississippi Real Estate Appraiser Licensing and Certification Board.

"(3) All monies derived from the sale of the property described in subsection (1) of this section shall be deposited into a special fund created in the State Treasury for the use and benefit of the South Mississippi Regional Center. Unexpended amounts remaining in the special fund at the end of the fiscal year shall not lapse into the State General Fund, and any interest earned on the amounts in the special fund shall be deposited to the credit of the special fund.

"(4) The Department of Finance and Administration may correct and discrepancies in the legal description provided in this section.

"(5) The State of Mississippi shall retain all mineral rights to the property sold under this section."

Cross References —

Authority of State Board of Mental Health with respect to design, construction and administration of Boswell Retardation Center, see § 41-19-203.

Public educational services and equipment for exceptional children, including children with autism, see §§ 37-23-1 et seq.

Annual operational plan required by this section to include listing of services specified in § 41-4-1 that will be provided and those that won't be provided, see § 41-19-33.

Ellisville State School generally, see §§ 41-19-103 et seq.

Boswell Regional Center generally, see §§ 41-19-201 et seq.

JUDICIAL DECISIONS

1. Immunity from tort.

When the Mississippi Department of Mental Health enacted policies and procedures pursuant to Miss. Code Ann. § 41-4-7(g), it was acting in a discretionary fashion and was thus immune from tort liability when a patient was injured allegedly because of a placement decision that was made for him while he was committed to a state hospital. Dancy v. East Miss. State Hosp., 944 So. 2d 10, 2006 Miss. LEXIS 688 (Miss. 2006).

OPINIONS OF THE ATTORNEY GENERAL

The Department of Mental Health may accept a donation of land, a house, and improvements from the Clarke College Alumni Association and the Department may allow the Association to retain the use of a portion of the house, provided such use is reserved by grant as a condition of the donation. 2003 Miss. Op. Att'y Gen. 188.

The Mississippi Department of Mental Health may enter into long-term or multi-year leases of real and personal property without complying with the mandates of G.S. 7-11-11, 29-1-107, or 29-5-2. 2003 Miss. Op. Att'y Gen. 242.

The exemption authority provided the Mississippi Department of Mental Health (MDMH) in this section does not apply to other state or federal agencies that may be a party to the lease agreement with the MDMH unless these entities have separate and distinct statutory authority to waive the requirements of G.S. 7-11-11, 29-1-107, and 29-5-2. 2003 Miss. Op. Att'y Gen. 242.

The Mississippi Department of Mental Health cannot enter into a long term lease agreements with another state agency unless that agency has specific exemption authority from the lease requirements found in G.S. 7-11-11, 29-1-107, and 29-5-2. 2003 Miss. Op. Att'y Gen. 242.

RESEARCH REFERENCES

Practice References.

Health Care Administration Library (CD-ROM) (Matthew Bender).

Perlin, Mental Disability Law: Civil and Criminal, Second Edition (LexisNexis).

§ 41-4-8. Falsification of diagnosis of Medicaid-eligible client for mental health benefits.

(1) A person shall not make, present or cause to be made or presented a material falsification of diagnosis of a Medicaid-eligible client for a claim for Medicaid mental health services benefits, knowing the diagnosis and claim to be false, fictitious or fraudulent.

(2) A person who violates this section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not more than five

(5) years, or by a fine of not more than One Hundred Thousand Dollars ($100,000.00), or both.

(3) For purposes of subsection (1), if a regional mental health/intellectual disability center submits claims for Medicaid reimbursement or other funds from the Department of Mental Health, the lack of a certified physician or psychologist evaluation of the client for such claim as required under Section 41-4-7(c) shall be deemed a material falsification of diagnosis by the person responsible for making or presenting such claim.

HISTORY:

Laws, 1997, ch. 587, § 5; Laws, 2010, ch. 476, § 20, eff from and after passage (approved Apr. 1, 2010.).

Editor's Notes —

Laws of 1997, ch. 587, § 1, provides as follows:

"SECTION 1. This act shall be known and may be cited as the Mississippi Mental Health Reform Act of 1997."

Cross References —

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

§ 41-4-9. Advisory councils.

The State Board of Mental Health is hereby authorized and directed to create advisory councils to assist the board and department in the performance and discharge of their duties.

HISTORY:

Laws, 1974, ch. 567, § 5, eff from and after passage (approved April 23, 1974).

§ 41-4-10. Repealed.

Repealed by its own terms, effective July 1, 2017.

§ 41-4-10. [Laws, 2013, ch. 549, § 2, eff from and after July 1, 2013.]

Editor's Notes —

Former § 41-4-10 created the Strategic Planning and Best Practices Committee for the purpose of improving and coordinating mental health services in the state.

§ 41-4-11. Abolition of certain agencies, and transfer of authority, personnel and property to state board of mental health.

(1) On July 1, 1974, the Board of Trustees of Mental Institutions of the State of Mississippi and the Mississippi Interagency Commission on Mental Illness and Mental Retardation shall be abolished. The authority now vested in the State Board of Health relating to mental health, drug misuse and alcoholism is rescinded as of July 1, 1974.

(2) As of July 1, 1974, the Mississippi State Hospital at Whitfield, the East Mississippi State Hospital at Meridian, the Ellisville State School at Ellisville, the North Mississippi Regional Center at Oxford, and any other mental or intellectual disability facility that may be established, shall become subject to the jurisdiction and control of the State Department of Mental Health.

(3) All duties, responsibilities, authority, power, assets, liabilities, contractual rights and obligations, and property rights, whether accruing or vesting in the abolished agencies before or after April 23, 1974, are vested in the State Board of Mental Health.

(4) The board upon recommendation of the executive director shall select the heads of divisions and institutions necessary to carry out the provisions of this chapter who shall have qualifications appropriate to the duties they must discharge.

(5) Employees of the abolished agencies or divisions of agencies holding positions on June 30, 1974, shall be employees of the State Department of Mental Health on July 1, 1974. The board may combine or abolish positions as necessary to carry out the provisions of this chapter.

(6) Subject to the provisions and limitations of this chapter as expressly set forth in Section 41-4-13, all offices, services, programs and other activities of the abolished agencies or divisions of agencies are made offices, services, programs or other activities of the State Department of Mental Health, and the board is authorized to reorganize such offices, services, programs or other activities so as to achieve economy and efficiency; and the board may establish bureaus, divisions, hospitals, clinics, mental health centers, homes for persons with an intellectual disability, or other facilities for providing mental health services if it finds such action to be in the public interest.

HISTORY:

Laws, 1974, ch. 567, § 6(1-6); Laws, 1992, ch. 336, § 23; Laws, 2010, ch. 476, § 21, eff from and after passage (approved Apr. 1, 2010.).

Cross References —

Establishment of Boswell Regional Center, see §§ 41-19-201 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. Service of process.
2. Mississippi Tort Claims Act.

1. Service of process.

Although a state hospital and a state mental health department were established and controlled by Miss. Code Ann. § 41-4-11(2) and Miss. Code Ann. § 41-4-5 and service of process was governed by Miss. R. Civ. P. 4(d)(5), requiring service upon the Attorney General, the entitles waived the defenses of insufficient process and insufficient service of process because even though the defenses were properly and timely raised in their answer to a wrongful death action, their subsequent participation in litigation and their failure to pursue the defenses for two years waived the defenses. East Miss. State Hosp. v. Adams, 947 So. 2d 887, 2007 Miss. LEXIS 13 (Miss. 2007).

2. Mississippi Tort Claims Act.

Trial court erred in dismissing a son's wrongful death action against a state hospital because its director was the hospital's CEO under the Mississippi Tort Claims Act (MTCA) (Miss. Code Ann. § 11-46-1 et seq.), and the son provided pre-suit notice to the proper party; the definition of "State" in the MTCA included hospitals, and the Department of Mental Health was not a substitute for the CEO of the hospital, which was the "state entity." Ivy v. E. Miss. State Hosp., 191 So. 3d 120, 2016 Miss. LEXIS 188 (Miss. 2016).

§ 41-4-13. Purchases.

All commodities, equipment and furniture purchased and supply contracts entered into by the board shall be in accord with the provisions of Title 31, Chapter 7, Mississippi Code of 1972. No purchases shall be made from, nor shall any sales be made to, any member of the board.

HISTORY:
Laws, 1974, ch. 567, § 6(7), eff from and after passage (approved April 23, 1974).

§ 41-4-15. Repealed.

Repealed by Laws, 1997, ch. 587, § 7, eff from and after July 1, 1997. [Laws, 1974, ch. 567, § 7]

Editor's Notes —
Former § 41-4-15 provided that statutes empowering the State Department of Mental Health shall not affect or grant control over the regional mental health commissions or centers.

§ 41-4-17. Children's rehabilitation center excepted from state board of mental health jurisdiction.

Nothing herein contained shall operate to vest the State Board of Mental Health with any authority or jurisdiction over the Mississippi Children's Rehabilitation Center.

HISTORY:
Laws, 1974, ch. 567, § 8; Laws, 1981, ch. 498, § 8, eff from and after July 1, 1982.

§ 41-4-18. Department authorized to contract with private or public entities to transfer certain ICFMR beds to other private or public entities to better meet needs of individuals with intellectual disabilities; license for beds to remain with department.

(1) Notwithstanding Section 41-7-191(11) and Section 41-7-171 et seq., Mississippi Code of 1972, or any other section of law, the Department of Mental Health shall have the authority to contract with private and/or public entities to transfer beds within Intermediate Care Facilities for the Mentally Retarded owned and operated by the Department of Mental Health to locations owned and operated by private and/or public entities for the purpose of serving individuals with intellectual disabilities in the settings most appropriate to meet their needs.

(2) Any license granted to the Department of Mental Health by the Department of Health for the operation of transferred Intermediate Care Facility for the Mentally Retarded beds shall remain in the name of the Department of Mental Health and shall not be transferred into the name of the contractor unless the contractor has received the appropriate certificates of need.

HISTORY:
Laws, 2013, ch. 443, § 1, eff from and after July 1, 2013.

§ 41-4-19. Transfer of funds; issuance of warrants.

The board, may with the approval of the commission of budget and accounting, require the transfer of funds appropriated for the use of agencies consolidated under the provisions of this chapter. Said funds shall be transferred by the state auditor of public accounts to a separate account in the state treasury. The auditor shall issue his warrants upon requisitions signed by the proper person, officer or officers designated by the board.

HISTORY:
Laws, 1974, ch. 567, § 9, eff from and after passage (approved April 23, 1974).

Editor's Notes —
Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

§ 41-4-21. Fiscal procedures.

For the operations of all facilities placed under the control of the department and for all of its operations, the board shall adopt a uniform system of reporting and accounting approved by the state department of audit, and shall prepare an annual report to the legislature setting forth the disbursements of all moneys appropriated and specifying the facilities and activities upon which funds were expended. It shall prepare annually, or cause to be prepared, a budget for its total operation for the ensuing fiscal period in the manner and form as required by the legislative budget office.

HISTORY:
Laws, 1974, ch. 567, § 10; Laws, 1984, ch. 488, § 205, eff from and after July 1, 1984.

Cross References —
Joint Legislative Budget Committee and Legislative Budget Office, generally, see §§ 27-103-101 et seq.

§ 41-4-23. Security guards and campus police at mental health or intellectual disability facilities.

(a) It will be the duty of the director of any mental health or intellectual disability facility under the direction or control of the State Department of Mental Health to designate certain employees as security guards and campus police. The names, qualifications, and training of such campus police will be reported to the Executive Director of the State Department of Mental Health and spread upon the official minutes of the State Board of Mental Health.

All campus police, subsequent to employment but prior to performing duties as campus police, will attend and satisfactorily complete the training course required for law enforcement officers at the Law Enforcement Officer's Training Academy or an equivalent facility. Campus police training may be at the expense of the Department of Mental Health and conditioned upon work repayment by the employee in accordance with educational leave regulations promulgated by the State Board of Mental Health. Failure to meet repayment obligations may result in revocation of law enforcement certification in the same manner provided in Section 37-101-291. A complete record of all law enforcement training of each employee will be maintained in each employee's record of employment. A master file of all such employees' training will be kept in the central office of the State Department of Mental Health.

(b) All campus police will be duly constituted peace officers with powers and duties of a constable but such authority may be exercised only on the premises of institutions under the control of the State Department of Mental Health and public property immediately adjacent to such premises. Each person designated as a security guard or campus police will enter into bond in the penalty amount of not less than Ten Thousand Dollars ($10,000.00), the premium for which shall be paid by the facility employing such security guard or campus police.

(c) All security guards and campus police will exercise their authority while in performance of their duty on any of the facilities under the direction or control of the State Department of Mental Health and public property immediately adjacent to such facilities; will be required to dress in uniforms prescribed by the State Board of Mental Health; and will be authorized to carry weapons. Employees designated as campus police shall be duly sworn and vested with authority to bear arms and make arrests, and shall exercise primarily the responsibilities of the prevention and detection of crime, the apprehension of criminals, and the enforcement of the ordinances and policies of the Department of Mental Health, a political subdivision of the State of Mississippi. Employees designated as campus police shall be considered law enforcement officers within the meaning of Section 45-6-3.

HISTORY:

Laws, 1976, ch. 478; Laws, 2002, ch. 359, § 1; Laws, 2010, ch. 476, § 22, eff from and after passage (approved Apr. 1, 2010).

Cross References —

Failure to meet terms of educational loan contract as grounds for revocation of professional license earned through paid educational leave compensation granted under program for paid educational leave for study of certain health care professions, see § 37-101-291.

§ 41-4-25. Director of mental health facility authorized to transfer patient to another department facility.

Notwithstanding any other provision of law, the director of a Department of Mental Health facility has the authority to transfer any patient/resident to another Department of Mental Health facility as necessary for the welfare of that or any other patients/residents.

HISTORY:

Laws, 2002, ch. 467, § 1, eff from and after July 1, 2002.

§ 41-4-27. Mental health crisis center in Brookhaven, Mississippi, named in honor of Senator Billy V. Harvey.

The mental health crisis center located in Brookhaven, Mississippi, shall be named in honor of the late Senator Billy V. Harvey. The Department of

Mental Health shall place a distinctive plaque in a prominent place within the crisis center, which states the background, accomplishments and service of the late Senator Billy V. Harvey to the State of Mississippi.

HISTORY:

Laws, 2007, ch. 529, § 2, eff from and after passage (approved Apr. 18, 2007).

CHAPTER 5.

GOVERNING AUTHORITIES FOR STATE HOSPITALS AND INSTITUTIONS

State Eleemosynary Institutions. [Repealed] 41-5-1
Board of Trustees of Mental Institutions. 41-5-31
Penalties. [Repealed] 41-5-81

STATE ELEEMOSYNARY INSTITUTIONS [REPEALED]

Sec.
41-5-1 through 41-5-13. Repealed.

§§ 41-5-1 through 41-5-13. Repealed.

Repealed by Laws, 1989, ch. 527, § 3, eff from and after June 30, 1989.

§ 41-5-1. [Codes, 1942, §§ 6944, 6945; Laws, 1936, ch. 180]

§ 41-5-3. [Codes, 1942, § 6954; Laws, 1936, ch. 180]

§ 41-5-5. [Codes, 1942, § 6955; Laws, 1936, ch. 180; Laws, 1950, ch. 446; Laws, 1960, ch. 350; Laws, 1962, ch. 399]

§ 41-5-7. [Codes, 1942, §§ 6950, 6956; Laws, 1936, ch. 180]

§ 41-5-9. [Codes, 1942, § 6952.5; Laws, 1958, ch. 464, § 1; Laws, 1960, ch. 349; Laws, 1966, ch. 445, § 17; Laws, 1966, ch. 454, § 1]

§ 41-5-11. [Codes, 1892, § 2828; 1906, § 3209; Hemingway's 1917, § 5726; 1930, § 4620; 1942, § 6975; Laws, 1970, ch. 393, § 1]

§ 41-5-13. [Codes, 1930, § 4621; 1942, § 6976]

Editor's Notes —

Former § 41-5-1 established the board of state eleemosynary institutions.

Former § 41-5-3 specified when the board would meet, and provided for the election of officers.

Former § 41-5-5 provided for the compensation of the board.

Former § 41-5-7 specified the powers and duties of the board.

Former § 41-5-9 authorized the employment of superintendents for each state charity hospitals.

Former § 41-5-11 required the board to make certain reports to the legislature.

Former § 41-5-13 required superintendents to make certain reports to board of trustees.

BOARD OF TRUSTEES OF MENTAL INSTITUTIONS

Sec.
41-5-31 through 41-5-43. Repealed.
41-5-44. Establishment of nursing home for patients with an intellectual disability.
41-5-45 through 41-5-53. Repealed.
41-5-55. Repealed.

§§ 41-5-31 through 41-5-43. Repealed.

Repealed by Laws, 1974, ch. 567, § 15, eff from and after passage (approved April 23, 1974).

§ 41-5-31. [Laws, 1947, 1st Ex. Sess. ch. 9, § 1]
§ 41-5-33. [Laws, 1947, 1st Ex. Sess. ch. 9, § 2]
§ 41-5-35. [Laws, 1947, 1st Ex. Sess. ch. 9, § 3]
§ 41-5-37. [Laws, 1947, 1st Ex. Sess. ch. 9, § 4; Laws, 1966, ch. 453, § 1]
§ 41-5-39. [Laws, 1947, 1st Ex. Sess. ch. 9, § 4; Laws, 1966, ch. 453, § 1]
§ 41-5-41. [Laws, 1947, 1st Ex. Sess. ch. 9, §§ 9, 10]
§ 41-5-43. [Laws, 1948, ch. 415, §§ 1-3]

Editor's Notes —

Former § 41-5-31 created the board of trustees of mental institutions.

Former § 41-5-33 provided for the appointment, term of office and removal of members of the board of trustees of mental institutions and for the filling of vacancies.

Former § 41-5-35 provided for the organizational meeting of the board of trustees of mental institutions and for the employment of an executive secretary.

Former § 41-5-37 provided for the payment of per diem and travel expenses to members of the board of trustees of mental institutions.

Former § 41-5-39 provided for regular and called meetings of the board of trustees of mental institutions and fixed a quorum.

Former § 41-5-41 set out the general powers and duties of the board of trustees of mental institutions.

Former § 41-5-43 vested the board of trustees of mental institutions with specific powers and authority to improve the institutions under its jurisdiction.

The authority, personnel and property of the abolished board of trustees of mental institutions were transferred to the State Board of Mental Health. See § 41-4-11. Section 16 of the repealing act provided, in part, that "all powers, duties and responsibilities transferred by this act shall remain under the authority and control of existing state agencies until July 1, 1974."

§ 41-5-44. Establishment of nursing home for patients with an intellectual disability.

(a) The Board of Mental Health is directed, if such is determined to be feasible by the board, to establish, equip, staff and operate nursing homes for patients with an intellectual disability. Those nursing homes shall be equipped, staffed and operated in accordance with the minimum standards established by the State Department of Health, and shall meet all the requirements for the admission and care of patients eligible for Medicare and Medicaid assistance as required by Titles XVIII and XIX of the Social Security Act, as amended.

(b) Admission to the nursing homes shall be limited to those patients who have been admitted to the mental institutions or intellectual disability centers or eligible for admission to the mental institutions or intellectual disability centers according to state laws and who have been certified as eligible for Medicare or Medicaid assistance as determined by the provisions of Mississippi laws governing the administration of Titles XVIII and XIX of the Social Security Act, as amended.

(c) The purpose of this section is to provide a nursing facility within the environs of the former Tuberculosis Sanatorium of Mississippi, thereby providing a needed service to eligible patients by making use of available buildings and resources for their care and constituting an additional service rendered by the institution.

HISTORY:

Laws, 1973, ch. 497, § 1; Laws, 1980, ch. 493, § 12; Laws, 1983, ch. 522, § 51; Laws, 1986, ch. 437, § 12; Laws, 2010, ch. 476, § 23, eff from and after passage (approved Apr. 1, 2010).

Cross References —

Establishment and operation of Boswell Regional Center as supplemental to this section, see §§ 41-19-201 through 41-19-213.

Procedures for and individual's procedural and substantive rights during the initial involuntary commitment hearing and thereafter, see §§ 41-21-61 et seq.

Definition of persons with mental illness and persons with an intellectual disability under provisions for treatment of persons in need of mental health treatment, see § 41-21-61.

Director's transfer of civilly commited patients between facilities operated by department of mental health, see § 41-21-87.

Voluntary admission of persons with mental illness and persons with an intellectual disability of particular age or marital status, see § 41-21-103.

Federal Aspects—

Titles XVIII and XIX of the Social Security Act, see 42 USCS § 1395 et seq.

RESEARCH REFERENCES

Practice References.

Health Care Administration Library (CD-ROM) (Matthew Bender).

Perlin, Mental Disability Law: Civil and Criminal, (LexisNexis).

Carlson, Long-Term Care Advocacy (Matthew Bender).

§§ 41-5-45 through 41-5-53. Repealed.

Repealed by Laws, 1974, ch. 567, § 15, eff from and after passage (approved April 23, 1974).

§ 42-5-45. [Laws, 1947, 1st Ex. Sess. ch. 9, § 14]

§ 41-5-47. [Laws, 1947, 1st Ex. Sess. ch. 9, §§ 12, 13; Laws, 1970, ch. 521, § 1]

§ 41-5-49. [Laws, 1947, 1st Ex. Sess. ch. 9, §§ 12, 13; Laws, 1970, ch. 521, § 2]

§ 41-5-51. [Laws, 1947, 1st Ex. Sess. ch. 9, § 5]

§ 41-5-53. [Laws, 1947, 1st Ex. Sess. ch. 9, § 7]

Editor's Notes —

Former § 41-5-45 dealt with the keeping of the records and accounts of the board of trustees of mental institutions, required them to be open for public inspection, and required the board to inspect the mental institutions regularly and frequently.

Former§ 41-5-47 required the board of trustees of mental institutions to provide a uniform accounting system for the mental institutions, to make an annual report to the legislature, to prepare an annual budget for each institution, and to be the exclusive representative of the mental institutions in dealing with the legislature.

Former § 41-5-49 contained specific requirements as to the form and contents of the annual report made to the Legislature by the board of trustees of mental institutions.

Former § 41-5-51 abolished the office of superintendent for each mental institution under the jurisdiction of the board of trustees of mental institutions.

Former § 41-5-53 dealt with the employment, qualifications, compensation, powers, authority, duties, and removal of a director for each institution under the jurisdiction of the board of trustees of mental institutions.

§ 41-5-55. Repealed.

Repealed by Laws, 2008, ch. 442, § 50, effective from and after July 1, 2008.

§ 41-5-55. [Codes, 1942, § 6946-11; Laws, 1947, 1st Ex. Sess. ch. 9, § 11; Laws, 1974, ch. 567, § 11, eff from and after passage (approved April 23, 1974).]

Editor's Notes —
Former § 41-5-55 prohibited the apprenticing of mentally ill or mentally retarded patients.

PENALTIES
[REPEALED]

Sec.
41-5-81. Repealed.

§ 41-5-81. Repealed.

Repealed by Laws, 2008, ch. 442, § 50, effective from and after July 1, 2008.

§ 41-5-81. [Codes, 1930, § 4617; 1942, § 6972; Laws, 1924, ch. 307.]

Editor's Notes —
Former § 41-5-81 provided certain criminal penalties for apprenticing mentally ill or mentally retarded patients.

CHAPTER 7.

HOSPITAL AND HEALTH CARE COMMISSIONS

State Hospital Commission; Indigent Care Law. 41-7-1
Hospital Reimbursement Commission. 41-7-71
Health Care Commission. 41-7-111
Health Care Certificate of Need Law of 1979. 41-7-171
Statewide Health Coordinating Council. [Repealed] 41-7-301
Health Maintenance Organizations. [Repealed] 41-7-401

STATE HOSPITAL COMMISSION; INDIGENT CARE LAW

Sec.
41-7-1 through 41-7-19. Repealed.
41-7-21. Local boards of trustees may enact rules and regulations.
41-7-23 through 41-7-33. Repealed.
41-7-35. Hospitals may not exact additional payments from patients.
41-7-37. Repealed.
41-7-39. Wrongfully obtaining care, treatment or hospitalization.
41-7-41 and 41-7-43. Repealed.
41-7-45. Laws governing funds to apply.

§§ 41-7-1 through 41-7-19. Repealed.

Repealed by Laws, 1986, ch. 437, § 6, eff from and after July 1, 1986.

§ 41-7-1. [Codes, 1942, § 7130; Laws, 1936, ch. 178]

§ 41-7-3. [Codes, 1942, § 7131; Laws, 1936, ch. 178; Laws, 1978, ch. 369, § 1]

§ 41-7-5. [Codes, 1942, § 7145; Laws, 1936, ch. 178]

§ 41-7-7. [Codes, 1942, § 7146; Laws, 1936, ch. 178]

§ 41-7-9. [Codes, 1942, § 7132; Laws, 1936, ch. 178; Laws, 1944, ch. 278; Laws, 1946, ch. 378; Laws, 1950, ch. 460; Laws, 1960, ch. 354, § 1; Laws, 1962, ch. 406, § 1; Laws, 1964, ch. 432, § 1; Laws, 1976, ch. 343; Laws, 1982, ch. 458.]

§ 41-7-11. [Codes, 1942, § 7134; Laws, 1936, ch. 178; Laws, 1960, ch. 354, § 2]

§ 41-7-13. [Codes, 1942, § 7136; Laws, 1936, ch. 178; Laws, 1938, ch. 327; Laws, 1960, ch. 354, § 4; Laws, 1981, ch. 404, § 1]

§ 41-7-15. [Codes, 1942, § 7135; Laws, 1936, ch. 178; Laws, 1960, ch. 354, § 3]

§ 41-7-17. [Codes, 1942, § 7137; Laws, 1936, ch. 178; Laws, 1960, ch. 354, § 5; Laws, 1964, ch. 433, § 1]

§ 41-7-19. [Codes, 1942, § 7140; Laws, 1936, ch. 178; Laws, 1960, ch. 354, § 8]

Editor's Notes —

Former § 41-7-1 created the State Hospital Commission, and specified its membership.

Former § 41-7-3 directed that the commission be organized and personnel be selected.

Former § 41-7-5 specified the terms of members of the commission and their compensation.

Former § 41-7-7 specified quorum requirements for commission meetings.

Former § 41-7-9 specified the duties of the commission.

Former § 41-7-11 pertained to the establishment of minimum requirements for a standard hospital.

Former § 41-7-13 specified eligibility requirements for reimbursement for the care of indigent persons.

Former § 41-7-15 provided for certificates of eligibility and compliance.

Former § 41-7-17 provided for the establishment of local boards of trustees.

Former § 41-7-19 directed that local boards of trustees visit standard hospitals.

Laws of 1986, ch. 437, §§ 1, 2, effective from and after July 1, 1986, provide as follows:

"SECTION 1. This act shall be known and may be cited as the Mississippi Health Services Reorganization Act of 1986.

"SECTION 2. All records, property and unexpended balances of appropriations, allocations or other funds of any agency abolished or affected by this act shall be transferred to the appropriate agency according to the merger of their functions under this act."

§ 41-7-21. Local boards of trustees may enact rules and regulations.

The board of trustees for such hospital or hospitals are authorized to adopt such other rules and regulations as may become necessary in each community to protect the patients and charity fund, and to make an equitable distribution of said funds in said counties and districts in the territories served by their respective institutions.

HISTORY:

Codes, 1942, § 7141; Laws, 1936, ch. 178.

§§ 41-7-23 through 41-7-33. Repealed.

Repealed by Laws 1986, ch. 437, § 6, eff from and after July 1, 1986.

§ 41-7-23. [Codes, 1942, § 7139; Laws, 1936, ch. 178; Laws, 1960, ch. 354, § 7]

§ 41-7-25. [Codes, 1942, § 7139; Laws, 1936, ch. 178; Laws, 1960, ch. 354, § 7]

§ 41-7-27. [Codes, 1942, § 7138; Laws, 1936, ch. 178; Laws, 1938, ch. 267; Laws, 1960, ch. 354, § 6; Laws, 1964, ch. 434, § 1; Laws, 1972, ch. 424, § 1; Laws, 1977, ch. 345; Laws, 1980, ch. 409]

§ 41-7-29. [Codes, 1942, § 7138-01; Laws, 1946, ch. 482, §§ 1-5; Laws, 1960, ch. 354, § 13]

§ 41-7-31. [Codes, 1942, § 7138; Laws, 1936, ch. 178; Laws, 1938, ch. 267; Laws, 1960, ch. 354, § 6; Laws, 1964, ch. 434, § 1]

§ 41-7-33. [Codes, 1942, § 7142; Laws, 1936, ch. 178; Laws, 1962, ch. 406, § 2; Laws, 1964, ch. 434, § 2]

Editor's Notes —

Former § 41-7-23 directed local boards to make certain reports.

Former § 41-7-25 specified reimbursement procedures.

Former § 41-7-27 pertained to admission of patients and certificates of eligibility.

Former § 41-7-29 pertained to admission of patients having cancer.

Former § 41-7-31 required the state hospital commission to make reports concerning treatments.

Former § 41-7-33 required the state hospital commission to make reports concerning expenditures.

§ 41-7-35. Hospitals may not exact additional payments from patients.

No hospital shall be allowed to charge, accept or retain any additional payment from or in behalf of any indigent patient for hospital services rendered while being cared for under the terms of Sections 41-7-1 through 41-7-45, unless it appears that the patient was wrongfully or mistakenly qualified or admitted as an indigent patient. This section shall not be construed, however, to prohibit any hospital from charging, accepting or retaining lawful payments or contributions from governmental or other public sources or from philanthropic or charitable sources having an impersonal interest in the patients involved.

HISTORY:
Codes, 1942, § 7132; Laws, 1936, ch. 178; Laws, 1944, ch. 278; Laws, 1946, ch. 378; Laws, 1950, ch. 460; Laws, 1960, ch. 354, § 1; Laws, 1962, ch. 406, § 1; Laws, 1964, ch. 432, § 1, eff from and after June 30, 1964.

Editor's Notes —
This section contains a reference to §§ 41-7-1 through 41-7-45. All of these sections, except for §§ 41-7-21, 41-7-35, 41-7-39, and 41-7-45, were repealed by Law of, 1986, ch. 437, § 6, eff from and after July 1, 1986.

Cross References —
Power of board of supervisors to make contributions, see § 19-5-93.

Municipal contributions for hospital purposes, see §§ 21-19-5, 21-19-7.

§ 41-7-37. Repealed.

Repealed by Laws, 1979, ch. 400, § 2, eff from and after July 1, 1979.
[En Laws, 1960, ch. 354, § 11]

Editor's Notes —
Former § 41-7-37 prohibited physicians on the staffs of hospitals participating in the indigent care program from taking fees for medical or surgical services rendered indigent patients.

§ 41-7-39. Wrongfully obtaining care, treatment or hospitalization.

Any person knowingly obtaining or attempting to obtain, or any person, firm or corporation who knowingly aids or abets any person to obtain, or attempt to obtain, by means of a willfully false statement or representation or impersonation, or other fraudulent device, any care, treatment or hospitalization provided by the provisions of Sections 41-7-1 through 41-7-45, to which he is not lawfully entitled shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law.

HISTORY:
Codes, 1942, § 7144.5; Laws, 1960, ch. 354, § 12, eff July 1, 1960.

Editor's Notes —
This section contains a reference to §§ 41-7-1 through 41-7-45. All of these sections, except for §§ 41-7-21, 41-7-35, 41-7-39, and 41-7-45, were repealed by Laws of 1986, ch. 437, § 6, eff from and after July 1, 1986.

§§ 41-7-41 and 41-7-43. Repealed.

Repealed by Laws, 1986, ch. 437, § 6, eff from and after July 1, 1986.
§ 41-7-41. [Codes, 1942, § 7133; Laws, 1936, ch. 178]

§ 41-7-43. [Codes, 1942, § 7143; Laws, 1936, ch. 178; Laws, 1962, ch. 406, § 2; Laws, 1964, ch. 434, § 2; Laws, 1970, ch. 416, § 1; Laws, 1981, ch. 404, § 2; Laws, 1983, ch. 501]

Editor's Notes —

Former § 41-7-41 authorized the commission to take steps necessary to obtain federal funds.

Former § 41-7-43 pertained to the allocation of funds appropriated for the support of qualified hospitals.

§ 41-7-45. Laws governing funds to apply.

All sums of money that may be appropriated to carry out the provisions of Sections 41-7-1 through 41-7-45 shall be expended only pursuant to appropriation approved by the Legislature and as provided by law.

HISTORY:

Codes, 1942, § 7144; Laws, 1936, ch. 178; Laws, 1960, ch. 354, § 10; Laws, 1984, ch. 488, § 206, eff from and after July 1, 1984.

Editor's Notes —

This section contains a reference to §§ 41-7-1 through 41-7-45. All of these sections, except for §§ 41-7-21, 41-7-35, 41-7-39, and 41-7-45, were repealed by Laws of 1986, ch. 437, § 6, eff from and after July 1, 1986.

Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

HOSPITAL REIMBURSEMENT COMMISSION

Sec.	
41-7-71.	Declaration of policy.
41-7-73.	State institutions enumerated.
41-7-75 and 41-7-77.	Repealed.
41-7-79.	Assessment and collection of charges by state institutions.
41-7-81 through 41-7-85.	Repealed.
41-7-87.	No priority in admitting patients to institutions.
41-7-89.	Repealed.
41-7-90.	Patient's personal deposit fund; applied to payment of care; disposition of personal property.
41-7-91.	Deposit of funds.
41-7-93.	Repealed.
41-7-95.	Moneys exempted; certain sections not repealed.

§ 41-7-71. Declaration of policy.

It is hereby declared to be the policy of the State of Mississippi that a patient or resident in a state institution whose estate is sufficient, or, if not, who has (a) a spouse; or (b) one or more parent(s) if said patient or resident is under the age of twenty-one (21) years and unmarried, who is(are) financially able to pay all or any part of the cost of such hospitalization or treatment, shall be required to pay for all or part of his or her maintenance in such institution. No resident of this state shall be refused admission to or treatment in any of the institutions enumerated in Section 41-7-73 because of his inability to pay all or any of said costs. It shall be the duty of the director or the governing board, as appropriate, of the admitting institution to ascertain the financial ability of the patient or resident and to establish an amount to be paid monthly based on current ability to pay, with a continuing claim for the difference in the amount paid and the maximum charges assessed that could be made as determined pursuant to Section 41-7-79.

HISTORY:

Codes, 1942, § 7146.7-01; Laws, 1962, ch. 410, § 1; Laws, 1983, ch. 337; Laws, 1986, ch. 437, § 8; Laws, 1988, ch. 445, § 1, eff from and after July 1, 1988.

Cross References —

Sliding scale fees, see § 41-7-79.

JUDICIAL DECISIONS

1. In general.

The provisions of §§ 41-7-71 et seq., which empowered the Mississippi Hospital Reimbursement Commission to seek reimbursement from the estate of one civilly and involuntarily committed for all or part of the cost of care and treatment rendered by a state hospital, constitute an exception to the general rule of § 41-17-1 that persons are entitled to treatment at the Mississippi State Hospital "free of charge"; moreover, in an action seeking reimbursement from the estate of one civilly and involuntarily committed, those provisions did not operate as ex post facto laws, since a previous act required reimbursement from solvent incompetent persons for care and treatment at state mental hospitals, and since the Commission claimed nothing against the estate for care or treatment rendered prior to the statutes' effective date. Chill v. Mississippi Hospital Reimbursement Com., 429 So. 2d 574, 1983 Miss. LEXIS 2563 (Miss. 1983).

Hospital's contract with state commission on hospital care involving state grant of aid, whereby the hospital agreed to furnish up to 10 per cent of the bed capacity free to indigent patients, does not contemplate the use of state funds to reimburse the hospital for charity patients, in view of the facts that a state charity hospital was already located in the same county, that there is no authority in the commission to make such reimbursement, and that the hospital agreed that no such reimbursement could or would be requested. Craig v. Mercy Hospital-Street Memorial, 209 Miss. 427, 45 So. 2d 809, 1950 Miss. LEXIS 408 (Miss. 1950).

RESEARCH REFERENCES

ALR.

Infant's liability for medical, dental, or hospital services. 53 A.L.R.4th 1249.

§ 41-7-73. State institutions enumerated.

The term "state institution" or "state institutions" as used in Sections 41-7-71 through 41-7-95 shall include the following: Mississippi State Hospital at Whitfield, Ellisville State School, East Mississippi State Hospital at Meridian, Mississippi Children's Rehabilitation Center, North Mississippi Regional Center, Hudspeth Regional Center, South Mississippi Regional Center, North Mississippi State Hospital at Tupelo, South Mississippi State Hospital at Purvis, University of Mississippi Hospital, Boswell Regional Center, the Mississippi Adolescent Center at Brookhaven, the Specialized Treatment Facility for the Emotionally Disturbed in Harrison County, and the Central Mississippi Residential Center at Newton.

HISTORY:

Codes, 1942, § 7146.7-04; Laws, 1962, ch. 410, § 4; Laws, 1975, ch. 365; Laws, 1981, ch. 539, § 4; Laws, 1986, ch. 437, § 9; Laws, 1992, ch. 336, § 22; Laws, 2002, ch. 350, § 1; Laws, 2009, ch. 563, § 14, eff from and after passage (approved May 13, 2009).

Editor's Notes —

Sections 41-7-75 and 41-7-77, 41-7-81 through 41-7-85, 41-7-89 and 41-7-93 referred to in this section were repealed by Laws of 1986, ch. 437, § 7, effective from and after July 1, 1986.

Cross References —

University of Mississippi Hospital, see §§ 37-115-25 et seq.

Prohibition against refusal to admit or treat a person, see § 41-7-71.

Deposit with director or other officer of state institution funds for personal benefit of patients, see § 41-7-90.

Authorization for directors of state institutions listed in this section to accept federal aid to care for wartime veterans, see § 41-17-11.

Assessment of support and maintenance costs of patients at Boswell Retardation Center, see § 41-19-209.

§§ 41-7-75 and 41-7-77. Repealed.

Repealed by Laws, 1986, ch. 437, § 7, eff from and after July 1, 1986.

§ 41-7-75. [Codes, 1942, § 7146.7-02; Laws, 1962, ch. 410, § 2]

§ 41-7-77. [Codes, 1942, § 7146.7-08; Laws, 1962, ch. 410, § 8]

Editor's Notes —

Former § 41-7-75 created the hospital reimbursement commission, and specified its members.

Former § 41-7-77 directed the capitol commission to furnish suitable office space for the hospital reimbursement commission.

§ 41-7-79. Assessment and collection of charges by state institutions.

Each state institution shall have the power to assess and collect charges from patients, patients' estates and from all persons legally liable for the cost of care of such patients in such state institution. The maximum charges which may be made shall be based on the estimated cost of operating the institution, and such costs shall include a reasonable amount for depreciation. The director or the governing board of each institution, as appropriate, shall investigate or cause to be investigated the financial ability of each patient, his or her estate, and all other persons legally liable for the cost or care of the patient, and the charges assessed shall be in accordance with the ability of the person assessed to pay.

The Director of the Mississippi Children's Rehabilitation Center or the governing board of the center, as appropriate, upon conclusion of the investigation of the financial ability of each patient and all other persons legally liable for the cost of care of the patient, shall assess a fee against each patient based on the financial ability of such patient or others legally liable for such patient to pay. The fee shall be adjustable and commensurate with the patient's financial ability to pay. In order to receive the benefits of the sliding scale fee each patient is required to provide for the Children's Rehabilitation Center sufficient financial information in order to allow the center to make a determination as to whether or not a reduced fee is appropriate. The center shall not utilize such fee scale for any patient unless the patient has a need for additional treatment, and has no insurance covering his treatment or such insurance is exhausted. The Children's Rehabilitation Center shall make every effort to collect the total charges from a patient, the patient's estate and from all persons legally liable for the cost of care of the patient before it may utilize a sliding fee scale for the patient.

After three (3) good faith attempts have been made to collect a remaining balance of such charges, and upon the recommendation of the Children's Rehabilitation Center fiscal officer, said balance may be declared uncollectible and worthless, and no longer listed as an asset.

In the determination of ability to pay, the director or governing board shall not work an undue hardship on any patient or person legally responsible for such a patient. The value of a homestead shall not be considered in determining the ability to pay. The number of dependents of a patient or the party legally responsible for such patient shall be considered in determining ability to pay. The value of real and/or personal property may also be considered.

The director or the governing board, as appropriate, shall have authority to enter into agreements with the patients or others legally liable whereby periodic payments can be made on said accounts. The director or governing board may accept notes, secured or open, or any other evidences of indebtedness.

The director or the governing board, as appropriate, of each state institution shall have the right to institute suits where necessary or advisable, and it shall be the duty of the Attorney General to institute such suits either in the name of the institution or in the name of the State of Mississippi. Except in matters involving the administration of estates, the probate of wills or the appointment of guardians or conservators, venue for such suits shall lie in the county in which the institution is located, and the venue shall not be subject to change.

HISTORY:

Codes, 1942, §§ 7146.7-01, 7146.7-05; Laws, 1962, ch. 410, §§ 1, 5; Laws, 1981, ch. 539, § 2; Laws, 1986, ch. 437, § 10; Laws, 1988, ch. 445, § 2, eff from and after July 1, 1988.

Cross References —

Suits by Attorney General on behalf of state and state officers, see §§ 7-5-37, 7-5-39.

Duty of the director of the admitting institution to ascertain the financial ability of a patient or resident to pay, see § 41-7-71.

Application of funds in patient's personal deposit fund to payment of care, see § 41-7-90.

Provision that, after death or discharge of patient, any unexpended balance remaining in his personal deposit fund shall be applied for payment of care and other costs, not to exceed the maximum charge that could be made under this section, see § 41-7-90.

§§ 41-7-81 through 41-7-85. Repealed.

Repealed by Laws, 1986, ch. 437, § 7, eff from and after July 1, 1986.

§ 41-7-81. [Codes, 1942, § 7146.7-09; Laws, 1962, ch. 410, § 9; Laws, 1984, ch. 488, § 207]

§ 41-7-83. [Codes, 1942, § 7146.7-03; Laws, 1962, ch. 410, § 3; Laws, 1981, ch. 539, § 3]

§ 41-7-85. [Codes, 1942, § 7146.7-09; Laws, 1962, ch. 410, § 9]

Editor's Notes —

Former § 41-7-81 directed the hospital reimbursement commission to file monthly reports.

Former § 41-7-83 provided for a director of the hospital reimbursement commission.

Former § 41-7-85 directed the heads of state institutions to file reports reflecting financial ability of all patients, and authorized the acceptance of payments from patients on accounts.

§ 41-7-87. No priority in admitting patients to institutions.

No state institution shall give admission priority because of a patient's ability to pay. However, nothing in this section shall in any way affect the duties, responsibilities and requirements imposed on the University of Mississippi Hospital by Sections 37-115-25, 37-115-31, Mississippi Code of 1972.

HISTORY:

Codes, 1942, § 7146.7-10; Laws, 1962, ch. 410, § 10, eff from and after July 1, 1962.

§ 41-7-89. Repealed.

Repealed by Laws, 1986, ch. 437, § 7, eff from and after July 1, 1986. [Codes, 1942, § 7146.7-06; Laws, 1962, ch. 410, § 6]

Editor's Notes —

Former § 41-7-89 directed other state agencies, departments and institutions to cooperate with the hospital reimbursement commission.

§ 41-7-90. Patient's personal deposit fund; applied to payment of care; disposition of personal property.

(1) Any funds given or provided for the purpose of supplying extra comforts, conveniences or services to any patient in any state institution enumerated in Section 41-7-73, and any funds otherwise received and held from, for or on behalf of any such patient, shall be deposited by the director or other proper officer of the institution to the credit of that patient in an account which shall be known as the Patient's Personal Deposit Fund. Whenever the sum belonging to any patient, deposited to the patient's personal deposit fund, exceeds the sum of Seven Hundred Fifty Dollars ($750.00), the excess may be applied to the payment of the care, support, maintenance and medical attention of the patient.

(2) After the death or discharge of any patient for whose benefit any such fund has heretofore or shall hereafter be provided, any unexpended balance remaining in his personal deposit fund shall be applied for payment of care, cost of support, maintenance and medical attention, not to exceed the maximum charge that could be made as determined pursuant to Section 41-7-79. In the event any unexpended balance remains in that patient's personal deposit fund after complete reimbursement has been made for payment of care, support, maintenance and medical attention, and the director or other proper officer of the state institution has been or shall be unable to locate the person or persons entitled to such unexpended balance, the director or other proper officer may, after the lapse of one (1) year from the date of such death or discharge, deposit the unexpended balance to the credit of that institution's operating fund.

(3) All personal property, other than money, left by a patient at any state

institution which has remained unclaimed for one (1) year shall be disposed of in any manner determined by the director or other proper officer of the institution.

(4) The provisions of Section 43-13-120 shall not be applicable to any Medicaid patient in a state institution listed in Section 41-7-73, who has a personal deposit fund as provided for in this section.

HISTORY:
Laws, 1981, ch. 539, § 1; Laws, 1986, ch. 437, § 11, eff from and after July 1, 1986.

§ 41-7-91. Deposit of funds.

All funds collected under the provisions of Sections 41-7-71 through 41-7-95 shall be deposited in the state treasury to the credit of the operating fund of the institution where the patient is confined or is receiving treatment.

HISTORY:
Codes, 1942, § 7146.7-07; Laws, 1963, ch. 410, § 7, eff from and after July 1, 1962.

Editor's Notes —
Sections 41-7-75, 41-7-77, 41-7-81 through 41-7-85, 41-7-89 and 41-7-93, referred to in this section, were repealed by Laws of 1986, Ch. 437, § 7, effective from and after July 1, 1986.

§ 41-7-93. Repealed.

Repealed by Laws, 1986, ch. 437, § 7, eff from and after July 1, 1986. [Codes, 1942, § 7146.7-07; Laws, 1962, ch. 410, § 7]

Editor's Notes —
Former § 41-7-93 provided that the salaries and expenses of the director of the hospital reimbursement commission would be prorated against the several state institutions.

§ 41-7-95. Moneys exempted; certain sections not repealed.

All moneys collected under the provisions of Section 11-7-13 of the Mississippi Code of 1972, shall be exempted from the provisions of Sections 41-7-71 through 41-7-95.

Nothing in Sections 41-7-71 through 41-7-95 shall be construed as repealing Sections 85-3-17 and 85-3-19.

HISTORY:
Codes, 1942, §§ 7146.7-12, 7146.7-13; Laws, 1962, ch. 410, §§ 12, 13, eff from and after July 1, 1962.

Editor's Notes —
Sections 41-7-75, 41-7-77, 41-7-81 through 41-7-85, 41-7-89 and 41-7-93, referred to in this section, were repealed by Laws of 1986, Ch. 437, § 7, effective from and after July 1, 1986.

HEALTH CARE COMMISSION

Sec.
41-7-111 through 41-7-131. Repealed.
41-7-133. Utilization of federal funds.

Sec.
41-7-135 through 41-7-139. Repealed.
41-7-140. Continuing education program for hospital trustees.
41-7-141 and 41-7-143. Repealed.
41-7-145. Conveyance of existing hospital facilities or other property.
41-7-147. Repealed.
41-7-149. Annual audit.

§§ 41-7-111 through 41-7-131. Repealed.

Repealed by Laws, 1979, ch. 451, § 26, eff from and after July 1, 1979.

§ 41-7-111. [Laws, 1946, ch. 363, § 1; Laws, 1948, ch. 433, § 1; Laws, 1970, ch. 417, § 1]

§ 41-7-113. [Laws, 1946, ch. 363, § 2; Laws, 1948, ch. 433, § 2; Laws, 1958, ch. 364, § 1; 1966, ch. 445, § 20]

§ 41-7-115. [Laws, 1946, ch 363, § 3; Laws, 1954, ch. 286, § 1]

§ 41-7-117. [Laws, 1946, ch. 363, § 4; Laws, 1954, ch. 286, § 2]

§ 41-7-119. [Laws, 1946, ch. 363, § 5; Laws, 1948, ch. 433, § 3; Laws, 1954, ch. 286, § 3; Laws, 1958, ch. 364, § 2]

§ 41-7-121. [Laws, 1946, ch. 363, § 5; Laws, 1948, ch. 433, § 3; Laws, 1954, ch. 286, § 3; Laws, 1958, ch. 364, § 2]

§ 41-7-123. [Laws, 1946, ch. 363, § 6; Laws, 1948, ch. 430, § 1; Laws, 1954, chs. 286, § 4, 292; Laws, 1958, ch. 355; Laws, 1962, ch. 407, § 1]

§ 41-7-125. [Laws, 1946, ch. 363, § 6; Laws, 1948, ch. 430, § 1; Laws, 1954, chs. 286, § 4, 292; Laws, 1958, ch. 355; Laws, 1962, ch. 407, § 1]

§ 41-7-127. [Laws, 1946, ch. 363, § 6; Laws, 1948, ch. 430, § 1; Laws, 1954, chs. 286, § 4, 292; Laws, 1958, ch. 355; Laws, 1962, ch. 407, § 1]

§ 41-7-129. [Laws, 1962, ch. 412, §§ 1, 2]

§ 41-7-131. [Laws, 1946, ch. 363, § 13; Laws, 1954, ch. 286, § 8]

Editor's Notes —

Former § 41-7-111 created the Mississippi Commission on Hospital Care and provided for the appointment of members, terms of office, the filling of vacancies, the organization of the commission, and the per diem and travel expenses of members.

Former § 41-7-113 dealt with the rules and records of the commission on hospital care, the employment of an executive director and other employees, and the procurement of space, equipment and supplies.

Former § 41-7-115 dealt with the general powers and duties of the commission on hospital care.

Former § 41-7-117 made it the duty of the commission on hospital care to prepare a statewide hospital plan, to conduct studies and surveys, and to report findings and recommendations to the legislature at each regular session.

Former § 41-7-119 provided for grants-in-aid by the commission on hospital care for hospitals and other health care facilities, including schools of nursing, and placed limits on the size and number of such grants.

Former § 41-7-121 dealt with applications to the commission on hospital care for grants-in-aid for hospital and other health care facilities.

Former § 41-7-123 set out the details for the making of grants-in-aid for hospitals and other health care facilities by the commission on hospital care.

Former § 41-7-125 provided for a twenty-year inchoate lien in favor of the state on property of hospitals or other health care facilities receiving grants-in-aid from the commission on hospital care, with the right to recover upon the occurrence of certain specified events.

Former § 41-7-127 set out the conditions under which the inchoate lien provided for in former § 41-7-125 might be released by the state and provided the method for so doing.

Former § 41-7-129 provided for grants-in-aid for student nurse dormitories on campuses of junior colleges.

Former § 41-7-131 provided for grants-in-aid for the purchase, reconstruction or remodeling of existing hospital or other health facilities.

§ 41-7-133. Utilization of federal funds.

Federal funds, if available, may be utilized to increase, expand or enlarge (1) any hospital or other health facility provided for and constructed in part by a grant under Sections 41-7-111 through 41-7-149, or (2) any hospital constructed in part by a grant under said sections, so as to provide for diagnostic or treatment centers and/or hospitals for the chronically ill and impaired and/or rehabilitation facilities and/or nursing homes, to be operated in connection with such hospital. However, such federal funds shall not be included in computing the cost of such construction for the purpose of determining the maximum amount of the grant of state funds. Such state funds, together with locally provided funds, may be used, however, for the purpose of matching any available federal funds. In determining the cost of any such construction, there may be included the fair market value of any equipment, material or building donated or otherwise made permanently available by any local group, political subdivision or individual, but the value of the services of any such group or person shall not be included.

HISTORY:

Codes, 1942, § 7146-07; Laws, 1946, ch. 363, § 7; Laws, 1954, ch. 286, § 5; Laws, 1958, ch. 355, § 3.

Editor's Notes —

Sections 41-7-111 through 41-7-131, 41-7-135 through 41-7-139, 41-7-141, 41-7-143 and 41-7-147, referred to in this section, were repealed by Laws of 1979, ch. 451, § 26, eff from and after July 1, 1979.

§§ 41-7-135 through 41-7-139. Repealed.

Repealed by Laws, 1979, ch. 451, § 26, eff from and after July 1, 1979.

§ 41-7-135. [Laws, 1946, ch. 363, § 8; Laws, 1948, ch. 433, § 4; Laws, 1950, ch. 353, § 1]

§ 41-7-137. [Laws, 1946, ch. 363, § 9; Laws, 1948, ch. 433, § 5; Laws, 1954, ch. 286, § 6]

§ 41-7-139. [Laws, 1946, ch. 363, § 10; Laws, 1954, ch. 286, § 7]

Editor's Notes —

Former § 41-7-135 required priorities based on need and optimum effectiveness in the making of grants-in-aid for hospitals and other health related facilities.

Former § 41-7-137 empowered the commission on hospital care to purchase hospital or related health facility equipment, supplies and accessories and to make grants thereof at cost value plus handling expense in lieu of monetary grants.

Former § 41-7-139 authorized the commission on hospital care to establish a state-wide nurse education program and provided for the funding thereof.

§ 41-7-140. Continuing education program for hospital trustees.

(1) Members of boards of trustees of hospitals who bear legal responsibility for the operation of such hospitals shall have made available by the State Department of Health a course of not less than ten (10) clock hours annually of training as continuing education.

(2) The State Department of Health, through regulations issued in accordance with law, shall prescribe the curriculum to be pursued, including subjects and areas of information deemed pertinent to the duties, activities and exercise of authority as hospital trustees; provided, however, that the department shall solicit advice and recommendations appertaining to such instruction from associations and other cognizant sources on hospital operation within the state.

(3) Such continuing education, attendance upon which shall not be mandatory for hospital trustees, shall be offered at such times and places so as to minimize inconvenience and hardship upon hospital trustees. Each hospital is hereby authorized and empowered to reimburse each trustee actual reasonable expenses incurred in attending such meetings.

(4) The department shall maintain records of all such continuing education programs and the names of all hospital trustees receiving such training.

HISTORY:
Laws, 1974, ch. 453; Laws, 1979, ch. 451, § 20; Laws, 1981, ch. 436, § 1; Laws, 1981, ch. 484, § 16; Laws, 1982, ch. 395, § 3; Laws, 1986, ch. 437, § 13, eff from and after July 1, 1986.

Cross References —
Traveling expenses of state officers and employees, see § 25-3-41.

Mississippi Health Care Commission Law of 1979, see §§ 41-7-171 et seq.

§§ 41-7-141 and 41-7-143. Repealed.

Repealed by Laws, 1979, ch. 451, § 26, eff from and after July 1, 1979. [Laws, 1946, ch. 363, §§ 11, 12]

Editor's Notes —
Former § 41-7-141 authorized the commission on hospital care to assist in the development of a pre-payment plan of hospitalization or hospitalization insurance.

Former § 41-7-143 provided for the disposition of the five existing state charity hospitals.

§ 41-7-145. Conveyance of existing hospital facilities or other property.

Any county board of supervisors or the governing authority of any municipality may, in carrying out or in furtherance of the provisions of Sections 41-7-111 through 41-7-149, or any program or plan adopted under such sections, as a part of any contribution, cash or otherwise, that may be required by such county or municipality, convey to any municipality, county or other political subdivision or agency of the state any property, real or personal, or any existing hospital facilities or other existing facilities suitable for hospital purposes owned by such county or municipality and not needed by it for governmental purposes. Such conveyance shall be upon such terms and conditions as may be agreed upon.

HISTORY:
Codes, 1942, § 7146-12; Laws, 1946, ch. 363, § 12.

Editor's Notes —
Sections 41-7-111 through 41-7-131, 41-7-135 through 41-7-139, 41-7-141, 41-7-143 and 41-7-

147, referred to in this section, were repealed by Laws of 1979, ch. 451, eff from and after July 1, 1979.

§ 41-7-147. Repealed.

Repealed by Laws, 1979, ch. 451, § 26, eff from and after July 1, 1979. [Laws, 1946, ch. 363, § 15; Laws, 1958, ch. 364, § 4]

Editor's Notes —

Former § 41-7-147 required signatures of at least two specified officers of the commission on hospital care on all disbursements and expenditures of commission funds.

§ 41-7-149. Annual audit.

The State Auditor shall make an annual audit of the accounts and expenditures of the Mississippi Health Care Commission.

HISTORY:

Codes, 1942, § 7146-14; Laws, 1946, ch. 363, § 14; Laws, 1979, ch. 451, § 21; Laws, 1985, ch. 455, § 9, eff from and after passage (approved March 29, 1985).

Editor's Notes —

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Cross References —

State fiscal officer, generally, see §§ 7-7-1 et seq.

Mississippi Health Care Commission Law of 1979, see §§ 41-7-171 et seq.

HEALTH CARE CERTIFICATE OF NEED LAW OF 1979

Sec.
41-7-171. Short title.
41-7-173. Definitions.
41-7-175. Abolition of Health Care Commission; administration of state health planning and development agency responsibilities by State Department of Health.
41-7-177. Repealed.
41-7-178. Repealed.
41-7-179 and 41-7-181. Repealed.
41-7-183. Functions and responsibilities.
41-7-185. Powers.
41-7-187. Certificate of need program.
41-7-188. Certificate of need program; assessment of fees for reviewing applications; revenue from fees to be deposited in special funds for certain uses by State Department of Health.
41-7-189. Certificate of need program; publication of program description.
41-7-190. Certificate of need program; limitations on ownership of beds.
41-7-191. Certificate of need; activities for which certificate is required.
41-7-193. Certificate of need; new institutional health services and other projects.
41-7-195. Certificate of need; validity; transferability; duration; revocation.
41-7-197. Certificate of need; hearing before hearing officer; review.
41-7-199. Repealed.
41-7-201. Appeal of final order pertaining to certificate of need for home health agency or health care facility.
41-7-202. Stay of commission proceedings pending appeal.
41-7-203. Repealed.
41-7-205. Determination of reviewability of proposed project.
41-7-207. Emergency replacement of facilities; expedited review.

Sec.
41-7-209. Violations.

§ 41-7-171. Short title.

Sections 41-7-171 through 41-7-209 shall be known and may be cited as the "Mississippi Health Care Certificate of Need Law of 1979."

HISTORY:

Laws, 1979, ch. 451, § 1; Laws, 1986, ch. 437, § 33, eff from and after July 1, 1986.

Cross References —

Notwithstanding the provisions of §§ 41-7-171 et seq., Department of Mental Health authorized to contract with private or public entities to transfer beds to other entities to better meet needs of clients, see § 41-4-18.

Powers of State Department of Health with respect to §§ 41-7-171 et seq., see § 41-7-185.

OPINIONS OF THE ATTORNEY GENERAL

Sections 37-115-21 et seq. establish the University Medical Center and its teaching hospital independently of the certificate of need statutes and, therefore, the University of Mississippi Medical Center is not subject to the certificate of need provisions. 2000 Miss. Op. Att'y Gen. 326.

§ 41-7-173. Definitions.

For the purposes of Section 41-7-171 et seq., the following words shall have the meanings ascribed herein, unless the context otherwise requires:

(a) "Affected person" means (i) the applicant; (ii) a person residing within the geographic area to be served by the applicant's proposal; (iii) a person who regularly uses health care facilities or HMOs located in the geographic area of the proposal which provide similar service to that which is proposed; (iv) health care facilities and HMOs which have, prior to receipt of the application under review, formally indicated an intention to provide service similar to that of the proposal being considered at a future date; (v) third-party payers who reimburse health care facilities located in the geographical area of the proposal; or (vi) any agency that establishes rates for health care services or HMOs located in the geographic area of the proposal.

(b) "Certificate of need" means a written order of the State Department of Health setting forth the affirmative finding that a proposal in prescribed application form, sufficiently satisfies the plans, standards and criteria prescribed for such service or other project by Section 41-7-171 et seq., and by rules and regulations promulgated thereunder by the State Department of Health.

(c)(i) "Capital expenditure," when pertaining to defined major medical equipment, shall mean an expenditure which, under generally accepted accounting principles consistently applied, is not properly chargeable as an expense of operation and maintenance and which exceeds One Million Five Hundred Thousand Dollars ($1,500,000.00).

(ii) "Capital expenditure," when pertaining to other than major medical equipment, shall mean any expenditure which under generally accepted accounting principles consistently applied is not properly chargeable as an expense of operation and maintenance and which exceeds, for clinical health services, as defined in subsection (k) below, Five Million Dollars ($5,000,000.00), adjusted for inflation as published by the State Department of Health or which exceeds, for nonclinical health services, as defined in subsection (k) below, Ten Million Dollars ($10,000,000.00), adjusted for inflation as published by the State Department of Health.

(iii) A "capital expenditure" shall include the acquisition, whether by lease, sufferance, gift, devise, legacy, settlement of a trust or other means, of any facility or part thereof, or equipment for a facility, the expenditure for which would have been considered a capital expenditure if acquired by purchase. Transactions which are separated in time but are planned to be undertaken within twelve (12) months of each other and are components of an overall plan for meeting patient care objectives shall, for purposes of this definition, be viewed in their entirety without regard to their timing.

(iv) In those instances where a health care facility or other provider of health services proposes to provide a service in which the capital expenditure for major medical equipment or other than major medical equipment or a combination of the two (2) may have been split between separate parties, the total capital expenditure required to provide the proposed service shall be considered in determining the necessity of certificate of need review and in determining the appropriate certificate of need review fee to be paid. The capital expenditure associated with facilities and equipment to provide services in Mississippi shall be considered regardless of where the capital expenditure was made, in state or out of state, and regardless of the domicile of the party making the capital expenditure, in state or out of state.

(d) "Change of ownership" includes, but is not limited to, inter vivos gifts, purchases, transfers, lease arrangements, cash and/or stock transactions or other comparable arrangements whenever any person or entity acquires or controls a majority interest of an existing health care facility, and/or the change of ownership of major medical equipment, a health service, or an institutional health service. Changes of ownership from partnerships, single proprietorships or corporations to another form of ownership are specifically included. However, "change of ownership" shall not include any inherited interest acquired as a result of a testamentary instrument or under the laws of descent and distribution of the State of Mississippi.

(e) "Commencement of construction" means that all of the following have been completed with respect to a proposal or project proposing construction, renovating, remodeling or alteration:

(i) A legally binding written contract has been consummated by the proponent and a lawfully licensed contractor to construct and/or complete the intent of the proposal within a specified period of time in accordance with final architectural plans which have been approved by the licensing authority of the State Department of Health;

(ii) Any and all permits and/or approvals deemed lawfully necessary by all authorities with responsibility for such have been secured; and

(iii) Actual bona fide undertaking of the subject proposal has commenced, and a progress payment of at least one percent (1%) of the total cost price of the contract has been paid to the contractor by the proponent, and the requirements of this paragraph (e) have been certified to in writing by the State Department of Health.

Force account expenditures, such as deposits, securities, bonds, et cetera, may, in the discretion of the State Department of Health, be excluded from any or all of the provisions of defined commencement of construction.

(f) "Consumer" means an individual who is not a provider of health care as defined in paragraph (q) of this section.

(g) "Develop," when used in connection with health services, means to undertake those activities which, on their completion, will result in the offering of a new institutional health service or the incurring of a financial obligation as defined under applicable state law in relation to the offering of such services.

(h) "Health care facility" includes hospitals, psychiatric hospitals, chemical dependency hospitals, skilled nursing facilities, end-stage renal disease (ESRD) facilities, including freestanding hemodialysis units, intermediate care facilities, ambulatory surgical facilities, intermediate care facilities for the mentally retarded, home health agencies, psychiatric residential treatment facilities, pediatric skilled nursing facilities, long-term care hospitals, comprehensive medical rehabilitation facilities, including facilities owned or operated by the state or a political subdivision or instrumentality of the state, but does not include Christian Science sanatoriums operated or listed and certified by the First Church of Christ, Scientist, Boston, Massachusetts. This definition shall not apply to facilities for the private practice, either independently or by incorporated medical groups, of physicians, dentists or health care professionals except where such facilities are an integral part of an institutional health service. The various health care facilities listed in this paragraph shall be defined as follows:

(i) "Hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons, or rehabilitation services for the rehabilitation of injured, disabled or sick persons. Such term does not include psychiatric hospitals.

(ii) "Psychiatric hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of persons with mental illness.

(iii) "Chemical dependency hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, medical and related services for the diagnosis and treatment of chemical dependency such as alcohol and drug abuse.

(iv) "Skilled nursing facility" means an institution or a distinct part of an institution which is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care or rehabilitation services for the rehabilitation of injured, disabled or sick persons.

(v) "End-stage renal disease (ESRD) facilities" means kidney disease treatment centers, which includes freestanding hemodialysis units and limited care facilities. The term "limited care facility" generally refers to an off-hospital-premises facility, regardless of whether it is provider or nonprovider operated, which is engaged primarily in furnishing maintenance hemodialysis services to stabilized patients.

(vi) "Intermediate care facility" means an institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who, because of their mental or physical condition, require health-related care and services (above the level of room and board).

(vii) "Ambulatory surgical facility" means a facility primarily organized or established for the purpose of performing surgery for outpatients and is a separate identifiable legal entity from any other health care facility. Such term does not include the offices of private physicians or dentists, whether for individual or group practice, and does not include any abortion facility as defined in Section 41-75-1(f).

(viii) "Intermediate care facility for the mentally retarded" means an intermediate care facility that provides health or rehabilitative services in a planned program of activities to persons with an intellectual disability, also including, but not limited to, cerebral palsy and other conditions covered by the Federal Developmentally Disabled Assistance and Bill of Rights Act, Public Law 94-103.

(ix) "Home health agency" means a public or privately owned agency or organization, or a subdivision of such an agency or organization, properly authorized to conduct business in Mississippi, which is primarily engaged in providing to individuals at the written direction of a licensed physician, in the individual's place of residence, skilled nursing services provided by or under the supervision of a registered nurse licensed to practice in Mississippi, and one or more of the following services or items:

1. Physical, occupational or speech therapy;
2. Medical social services;
3. Part-time or intermittent services of a home health aide;
4. Other services as approved by the licensing agency for home health agencies;
5. Medical supplies, other than drugs and biologicals, and the use of medical appliances; or
6. Medical services provided by an intern or resident-in-training at a hospital under a teaching program of such hospital.

Further, all skilled nursing services and those services listed in items 1 through 4 of this subparagraph (ix) must be provided directly by the licensed home health agency. For purposes of this subparagraph, "directly" means either through an agency employee or by an arrangement with another individual not defined as a health care facility.

This subparagraph (ix) shall not apply to health care facilities which had contracts for the above services with a home health agency on January 1, 1990.

(x) "Psychiatric residential treatment facility" means any nonhospital establishment with permanent licensed facilities which provides a twenty-four-hour program of care by qualified therapists, including, but not limited to, duly licensed mental health professionals, psychiatrists, psychologists, psychotherapists and licensed certified social workers, for emotionally disturbed children and adolescents referred to such facility by a court, local school district or by the Department of Human Services, who are not in an acute phase of illness requiring the services of a psychiatric hospital, and are in need of such restorative treatment services. For purposes of this subparagraph, the term "emotionally disturbed" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

1. An inability to learn which cannot be explained by intellectual, sensory or health factors;
2. An inability to build or maintain satisfactory relationships with peers and teachers;
3. Inappropriate types of behavior or feelings under normal circumstances;
4. A general pervasive mood of unhappiness or depression; or
5. A tendency to develop physical symptoms or fears associated with personal or school problems. An establishment furnishing primarily domiciliary care is not within this definition.

(xi) "Pediatric skilled nursing facility" means an institution or a distinct part of an institution that is primarily engaged in providing to inpatients skilled nursing care and related services for persons under twenty-one (21) years of age who require medical or nursing care or rehabilitation services for the rehabilitation of injured, disabled or sick persons.

(xii) "Long-term care hospital" means a freestanding, Medicare-certified hospital that has an average length of inpatient stay greater than twenty-five (25) days, which is primarily engaged in providing chronic or long-term medical care to patients who do not require more than three (3) hours of rehabilitation or comprehensive rehabilitation per day, and has a transfer agreement with an acute care medical center and a comprehensive medical rehabilitation facility. Long-term care hospitals shall not use rehabilitation, comprehensive medical rehabilitation, medical rehabilitation, sub-acute rehabilitation, nursing home, skilled nursing facility or sub-acute care facility in association with its name.

(xiii) "Comprehensive medical rehabilitation facility" means a hospital or hospital unit that is licensed and/or certified as a comprehensive medical rehabilitation facility which provides specialized programs that are accredited by the Commission on Accreditation of Rehabilitation Facilities and supervised by a physician board certified or board eligible in physiatry or other doctor of medicine or osteopathy with at least two (2) years of training in the medical direction of a comprehensive rehabilitation program that:

1. Includes evaluation and treatment of individuals with physical disabilities;

2. Emphasizes education and training of individuals with disabilities;

3. Incorporates at least the following core disciplines:
   (i) Physical Therapy;
   (ii) Occupational Therapy;
   (iii) Speech and Language Therapy;
   (iv) Rehabilitation Nursing; and

4. Incorporates at least three (3) of the following disciplines:
   (i) Psychology;
   (ii) Audiology;
   (iii) Respiratory Therapy;
   (iv) Therapeutic Recreation;
   (v) Orthotics;
   (vi) Prosthetics;
   (vii) Special Education;
   (viii) Vocational Rehabilitation;
   (ix) Psychotherapy;
   (x) Social Work;
   (xi) Rehabilitation Engineering.

These specialized programs include, but are not limited to: spinal cord injury programs, head injury programs and infant and early childhood development programs.

(i) "Health maintenance organization" or "HMO" means a public or private organization organized under the laws of this state or the federal government which:

(i) Provides or otherwise makes available to enrolled participants health care services, including substantially the following basic health care services: usual physician services, hospitalization, laboratory, x-ray, emergency and preventive services, and out-of-area coverage;

(ii) Is compensated (except for copayments) for the provision of the basic health care services listed in subparagraph (i) of this paragraph to enrolled participants on a predetermined basis; and

(iii) Provides physician services primarily:

1. Directly through physicians who are either employees or partners of such organization; or

2. Through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(j) "Health service area" means a geographic area of the state designated in the State Health Plan as the area to be used in planning for specified health facilities and services and to be used when considering certificate of need applications to provide health facilities and services.

(k) "Health services" means clinically related (i.e., diagnostic, treatment or rehabilitative) services and includes alcohol, drug abuse, mental health and home health care services. "Clinical health services" shall only include those activities which contemplate any change in the existing bed complement of any health care facility through the addition or conversion of any beds, under Section 41-7-191(1)(c) or propose to offer any health services if those services have not been provided on a regular basis by the proposed provider of such services within the period of twelve (12) months prior to the time such services would be offered, under Section 41-7-191(1)(d). "Nonclinical health services" shall be all other services which do not involve any change in the existing bed complement or offering health services as described above.

(*l*) "Institutional health services" shall mean health services provided in or through health care facilities and shall include the entities in or through which such services are provided.

(m) "Major medical equipment" means medical equipment designed for providing medical or any health-related service which costs in excess of One Million Five Hundred Thousand Dollars ($1,500,000.00). However, this definition shall not be applicable to clinical laboratories if they are determined by the State Department of Health to be independent of any physician's office, hospital or other health care facility or otherwise not so defined by federal or state law, or rules and regulations promulgated thereunder.

(n) "State Department of Health" or "department" shall mean the state agency created under Section 41-3-15, which shall be considered to be the State Health Planning and Development Agency, as defined in paragraph (u) of this section.

(o) "Offer," when used in connection with health services, means that it has been determined by the State Department of Health that the health care facility is capable of providing specified health services.

(p) "Person" means an individual, a trust or estate, partnership, corporation (including associations, joint-stock companies and insurance companies), the state or a political subdivision or instrumentality of the state.

(q) "Provider" shall mean any person who is a provider or representative of a provider of health care services requiring a certificate of need under Section 41-7-171 et seq., or who has any financial or indirect interest in any provider of services.

(r) "Radiation therapy services" means the treatment of cancer and other diseases using ionizing radiation of either high energy photons (x-rays or gamma rays) or charged particles (electrons, protons or heavy nuclei). However, for purposes of a certificate of need, radiation therapy services shall not include low energy, superficial, external beam x-ray treatment of superficial skin lesions.

(s) "Secretary" means the Secretary of Health and Human Services, and any officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

(t) "State Health Plan" means the sole and official statewide health plan for Mississippi which identifies priority state health needs and establishes standards and criteria for health-related activities which require certificate of need review in compliance with Section 41-7-191.

(u) "State Health Planning and Development Agency" means the agency of state government designated to perform health planning and resource development programs for the State of Mississippi.

HISTORY:

Laws, 1979, ch. 451, § 2; Laws, 1980, ch. 493, § 1; Laws, 1981, ch. 484, § 18; Laws, 1982, ch. 482, § 1; Laws, 1983, ch. 484, § 1; Laws, 1984, ch. 472, § 2; Laws, 1985, ch. 534, § 1; Laws, 1986, ch. 437, § 34; Laws, 1987, ch. 515, § 1; Laws, 1989, ch. 530, § 1; Laws, 1990, ch. 510, § 1; Laws, 1993, ch. 609, § 9; Laws, 1994, ch. 649, § 15; Laws, 1999, ch. 583, § 1; Laws, 2010, ch. 476, § 24; Laws, 2010, ch. 505, § 16; Laws, 2014, ch. 394, § 1; Laws, 2016, ch. 412, § 1, eff from and after July 1, 2016.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in paragraph (c)(ii). The words "One Million ($1,000,000.00)" were changed to "One Million Dollars ($1,000,000.00)". The Joint Committee ratified the correction at its May 20, 1998 meeting.

Section 24 of ch. 476, Laws of 2010, effective upon passage (approved April 1, 2010), amended this section. Section 16 of ch. 505, Laws of 2010, effective July 1, 2010 (approved April 8, 2010), but amended by ch. 556, § 1, to be effective from and after May 1, 2010, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 22, 2010, meeting of the Committee.

An error in a statutory reference at the end of (h)(viii) was corrected by substituting "Section 41-75-1(f)" for "Section 41-75-1(e)." The Joint Committee on Compilation, Revision and Publication of Legislation ratified the correction at its July 22, 2010, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal statutory reference in (n) by substituting "as defined in paragraph (u)" for "as defined in paragraph (t)." The Joint Committee ratified the correction at its July 24, 2014, meeting.

Editor's Notes —

This section was amended by Laws of 2010, ch. 505, § 16, effective from and after July 1, 2010. The effective date of Laws of 2010, ch. 505, was subsequently amended by Laws of 2010, ch. 556, § 1 which provides:

"SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

"Section 18. This act shall take effect and be in force from and after May 1, 2010."

Cross References —

Duty of health care commission to administer licensure and certification of health care facilities and health maintenance organizations, see § 41-7-183.

Power of Department of Health to prepare, review and revise State Health Plan, as defined in this section, see § 41-7-185.

Limitations on extent of ownership of beds in skilled nursing facility or intermediate care facility, see § 41-7-190.

Temporary suspension of issuance of certificates of need for certain facilities defined in this section, see § 41-7-191.

Certificate of need for nursing homes, intermediate care facilities, skilled nursing facilities and certain changes of ownership of health care facilities as defined in this section, see § 41-7-191.

Certificate of need required for health care facility to establish a home office or branch within existing health care facility, see § 41-7-191.

Appeal of final order pertaining to certificate of need for health care facility, see § 41-7-201.

Stay of proceedings regarding decision pertaining to certificate of need for a home health agency, see § 41-7-202.

Applicability of the Health Care Commission Law to the licensing of hospitals, see § 41-9-11.

Issuance of a license to a home health agency upon a determination that the license application is in compliance with §§ 41-7-173 et seq., see § 41-71-7.

Definition of "hospital equipment" for purposes of the Mississippi Hospital Equipment and Facilities Authority Act, see § 41-73-5.

Requirement that ambulatory surgical facilities comply with applicable provisions of §§ 41-7-175 et seq., see 41-73-9.

"Freestanding" ambulatory surgical facility, see § 41-75-1.

"Hospital affiliated" ambulatory surgical facility, see § 41-75-1.

Ambulatory surgical facility owned or operated by entity or person other than hospital or hospital holding company, see § 41-75-1.

Federal certification of ambulatory surgical facility owned or operated by hospital or hospital holding, leasing, or management company, see § 41-75-1.

Ambulatory surgical facility owned or operated by hospital or hospital holding, leasing, or management company, see § 41-75-1.

Applicability of this section's definition of "person" to provisions relative to the licensing of birthing centers, see §§ 41-77-1 and 41-77-5.

Applicability of the Health Care Commission Law to the licensing of homes for the aged or infirm, see § 43-11-9.

Federal Aspects—

Public Health Service Act, see 42 USCS §§ 201 et seq.

Provisions of the Federal Developmentally Disabled Assistance and Bill of Rights Act, see 42 USCS §§ 6000 et seq.

JUDICIAL DECISIONS

1. Certificate of need.

Residential nursing facility was allowed to exist without ever having had a certificate of need (CON) issued because the facility existed before CONs were required. No other authority was granted by a CON. Zumwalt v. Jones County Bd. of Supervisors, 19 So. 3d 672, 2009 Miss. LEXIS 421 (Miss. 2009).

Revocation of two certificates of need (CONs) for a hospital was not arbitrary and capricious because a hospital did not do anything that qualified as the commencement of construction or a good faith effort to obligate an approved expenditure; very little money had been spent in furtherance of a project, and the evidence showed that the hospital focused its efforts into the relocation of the project, rather than completion of the project contemplated by the CONs. Brentwood Health Mgmt. of Miss., LLC v. Miss. State Dep't of Health, 29 So. 3d 775, 2009 Miss. App. LEXIS 261 (Miss. Ct. App. 2009).

Mississippi State Department of Health did not err when it granted a certificate of need to provide magnetic resonance services to an applicant where the evidence showed that the projected unit would have provided for a minimum number of procedures per year based on information in a state health plan, pursuant to Miss. Code Ann. § 41-7-193(1); moreover, there was substantial evidence to show that a full range of services was available, and the Department did not base its decision on faulty financial projections. Open MRI, LLC v. Miss. State Dep't of Health, 939 So. 2d 813, 2006 Miss. App. LEXIS 737 (Miss. Ct. App. 2006).

OPINIONS OF THE ATTORNEY GENERAL

Offices of private physicians and dentists are excluded from definition of ambulatory surgical facility by Section 41-7-173(h)(vii) and ambulatory surgical services provided in such offices are not institutional health services. 1994 Miss. Op. Att'y Gen. 924.

Offices of private physicians and dentists in which ambulatory surgical services are provided are not health care facilities and are therefore not subject to certificate of need review. 1994 Miss. Op. Att'y Gen. 924.

An office that is a large, all encompassing, multi-speciality ambulatory surgical facility, is not a private office as intended by the Section 41-7-173. Moreover, a facility is a health care facility inasmuch as it would provide institutional health services. Accordingly, such a facility would not be exempt from the certificate of need requirements set forth in section 41-7-191(1)(d)(xi), despite the fact that it is owned by a physicians' group. 1996 Miss. Op. Att'y Gen. 802.

The establishment of a Distinct Part, PPS-excluded acute rehabilitation unit in an existing hospital, without the addition of any licensed beds and when the beds at issue will remain licensed as acute care beds and only the Medicare reimbursement schedule will change, is a project that requires certificate of need review and approval if the unit is either (1) a new health care facility, or (2) proposes to offer a new health service which was not previously offered by the hospital. 1999 Miss. Op. Att'y Gen. 309.

A board of trustees of a community hospital may acquire a building and related equipment from a physician with the permission of the owner of the community hospital and lease the building back to the physician, and so long as the center is not a separate identifiable legal entity, a certificate of need therefor is not required. 2000 Miss. Op. Att'y Gen. 17.

A board of trustees of a community hospital may construct and equip a facility suitable for a single service ambulatory surgery facility and may thereafter lease the building and equipment to a physician. 2000 Miss. Op. Att'y Gen. 17.

RESEARCH REFERENCES

ALR.

Liability of health maintenance organizations (HMOs) for negligence of member physicians. 51 A.L.R.5th 271.

§ 41-7-175. Abolition of Health Care Commission; administration of state health planning and development agency responsibilities by State Department of Health.

The State Department of Health shall be the sole and official agency of the State of Mississippi to administer and supervise, as prescribed by the Legislature, all responsibilities of the state health planning and development agency.

HISTORY:

Laws, 1979, ch. 451, § 3; Laws, 1983, ch. 484, § 2; Laws, 1986, ch. 437, § 35; Laws, 1987, ch. 515, § 2, eff from and after July 1, 1987.

Cross References —

Other provisions pertaining to Health Care Commission, see §§ 41-7-140, 41-7-149, 41-9-3, 41-9-13.

Functions and responsibilities of Health Care Commission, see § 41-7-183.

Powers of Health Care Commission, see § 41-7-185.

Powers and duties of the commission with respect to home health agencies, see §§ 41-71-1 et seq.

Federal Aspects—

Public Health Service Act, see 42 USCS §§ 201 et seq.

§ 41-7-177. Repealed.

Repealed by Laws, 1986, ch. 437, § 48, eff from and after July 1, 1986.

[Laws, 1979, ch. 451, § 4; Laws, 1980, ch. 560, § 17; Laws, 1984, ch. 488, § 309; Laws, 1985, ch. 534, § 2]

Editor's Notes —

Former § 41-7-177 provided for the appointment of members of the health care commission, and meetings of commission, and restricted participation by interested members.

§ 41-7-178. Repealed.

Repealed by Laws, 1989, ch. 530, § 5, eff from and after July 1, 1989.
[Laws, 1984, ch. 488, § 310]

Editor's Notes —

Former § 41-7-178 provided for the designation of persons to attend meetings of the Health Care Commission in a nonvoting capacity.

§§ 41-7-179 and 41-7-181. Repealed.

Repealed by Laws, 1986, ch. 437, § 48, eff from and after July 1, 1986.

§ 41-7-179. [Laws, 1979, ch. 451, § 5(1); Laws, 1980, ch. 493, § 2; Laws, 1983, ch. 536, § 6; Laws, 1985, ch. 534, § 3]

§ 41-7-181. [Laws, 1979, ch. 451, § 5(2)]

Editor's Notes —

Former § 41-7-179 provided for a director of the Health Care Commission, and specified his powers and duties.

Former § 41-7-181 provided for the transfer of employees to the Health Care Commission.

§ 41-7-183. Functions and responsibilities.

The State Department of Health shall have the duty of administering all functions and responsibilities of the designated state health planning and development agency as prescribed by the Legislature, and shall serve as the designated planning agency of the state for purposes of Section 1122 of Public Law 92-603 for the period of time that a contract is in effect between the Secretary and the State Department of Health for such purposes.

HISTORY:

Laws, 1979, ch. 451, § 6; Laws, 1980, ch. 493, § 3; Laws, 1981, ch. 484, § 12; Laws, 1983, ch. 484, § 3; Laws, 1985, ch. 534, § 4; Laws, 1986, ch. 437, § 36; Laws, 1987, ch. 515, § 3, eff from and after July 1, 1987.

Cross References —

Responsibility of commission to provide continuing education program for hospital trustees, see § 41-7-140.

Other functions of Health Care Commission, see §§ 41-9-1, 41-9-3, 41-9-7 through 41-9-23, 41-9-29 through 41-9-35.

§ 41-7-185. Powers.

In carrying out its functions under Section 41-7-171, et seq., the State Department of Health is hereby empowered to:

(a) Make applications for and accept funds from the secretary and other federal and state agencies and to receive and administer such other funds for the planning or provision of health facilities or health care as are appropriate to the accomplishment of the purposes of Section 41-7-171, et seq.; and to contract with the secretary to accept funds to administer planning activities on the community, regional or state level;

(b) With the approval of the secretary, delegate to or contract with any mutually agreeable department, division or agency of the state, the federal government, or any political subdivision of either, or any private corporation, organization or association chartered by the Secretary of State of Mississippi, authority for administering any programs, duties or functions provided for in Section 41-7-171, et seq.;

(c) Prescribe and promulgate such reasonable rules and regulations as may be necessary to the implementation of the purposes of Section 41-7-171, et seq., complying with Section 25-43-1, et seq.;

(d) Require providers of institutional health services and home healthcare services provided through a home health agency and any other provider of health care requiring a certificate of need to submit or make available statistical information or such other information requested by the State Department of Health, but not information that would constitute an unwarranted invasion of the personal privacy of any individual person or place the provider in jeopardy of legal action by a third party;

(e) Conduct such other hearing or hearings in addition to those provided for in Section 41-7-197, and enter such further order or orders, and with approval of the Governor enter into such agreement or agreements with the secretary as may be reasonably necessary to the realization by the people of Mississippi of the full benefits of Acts of Congress;

(f) In its discretion, contract with the secretary, or terminate any such contract, for the administration of the provisions, programs, duties and functions of Section 1122 of Public Law 92-603; but the State Department of Health shall not be relieved of matters of accountability, obligation or responsibility that accrued to the department by virtue of prior contracts and/or statutes;

(g) Prepare, review at least triennially, and revise, as necessary, a State Health Plan, as defined in Section 41-7-173, which shall be approved by the Governor before it becomes effective.

HISTORY:

Laws, 1979, ch. 451, § 7; Laws, 1980, ch. 493, § 4; Laws, 1981, ch. 484, § 13; Laws, 1983, ch. 484, § 4; Laws, 1985, ch. 534, § 5; Laws, 1986, ch. 437, § 37; Laws, 1987, ch. 515, § 4; Laws, 1989, ch. 530, § 3, eff from and after July 1, 1989.

Editor's Notes —

Section 25-43-1.101(3) provides that any reference to Section 25-43-1 et seq. shall be deemed to mean and refer to Section 25-43-1.101 et seq.

Laws of 1989, ch. 530, § 4, effective from and after July 1, 1989, provides as follows:

"SECTION 4. The State Department of Health shall conduct an in-depth study of the public health districts in the State of Mississippi and restructure these districts as is necessary to more accurately reflect the health care needs of the state, taking into account current population, demographics, trade centers, residential centers and communities of interest. The State Board of Health shall make a report on the restructure of said public health districts to the 1990 Regular Session of the Legislature."

Sections 41-7-177 through 41-7-181 and 41-7-199 referred to in the first paragraph are repealed by Laws, 1983, ch. 484, § 11, effective from and after April 9, 1983; Laws, 1986, ch. 437, § 48, effective from and after July 1, 1986; and Laws, 1989, ch. 530, § 5, effective from and after July 1, 1989.

Cross References —

Statewide health coordinating council, see § 41-7-173.

Retention of liability on delegation of certain duties, see § 41-7-197.

Licenses which may be issued by commission to insure safe, sanitary, and reasonably adequate care and treatment of individuals in hospitals, see §§ 41-9-1, 41-9-3, 41-9-7 through 41-9-23, 41-9-29 through 41-9-35.

Use of statistical data compiled pursuant to §§ 41-7-171 et seq., see §§ 41-9-23, 41-71-19.

JUDICIAL DECISIONS

1. Rule-making authority.

Pursuant to the plain language of Miss. Code Ann. § 41-7-195, the Mississippi State Department of Health did not have the authority to grant an applicant an extension of its Certificate of Need (CON) after the CON had expired, nor the authority to promulgate a rule allowing holders of expired CONS the right to request an extension of their CONs. Dialysis Solution, LLC v. Miss. State Dep't of Health, 31 So. 3d 1204, 2010 Miss. LEXIS 81 (Miss. 2010).

OPINIONS OF THE ATTORNEY GENERAL

The Governor does not have authority to amend the State Health Plan, as opposed to simply approving or disapproving it. 1999 Miss. Op. Att'y Gen. 275.

§ 41-7-187. Certificate of need program.

The State Department of Health is hereby authorized to develop and implement a statewide health certificate of need program. The State Department of Health is authorized and empowered to adopt by rule and regulation:

(a) Criteria, standards and plans to be used in evaluating applications for certificates of need;

(b) Effective standards to determine when a person, facility or organization must apply for a certificate of need;

(c) Standards to determine when a change of ownership has occurred or will occur; and

(d) Review procedures for conducting reviews of applications for certificates of need.

HISTORY:

Laws, 1979, ch. 451, § 8; Laws, 1986, ch. 437, § 38; Laws, 1987, ch. 515, § 5, eff from and after July 1, 1987.

Editor's Notes —

Laws of 2006, ch. 513, § 2 provides as follows:

"SECTION 2. The State Board of Health shall, not later than October 15, 2006, develop and make a report to the Chairmen of the Public Health and Welfare Committees of the Senate and House of Representatives, the Lieutenant Governor, the Speaker of the House of Representatives and the Governor, including any recommended legislation, on the following policies and procedures relating to the State Health Plan and the Health Care Facility Certificate of Need Law:

"(a) Review the procedures under which health care facility certificates of need are requested and issued or denied. Make reasonable recommendations (i) to reduce the time periods required for certificate of need review and appeal the refromwithout compromising the fairness of the decision; (ii) to exempt additional nonsubstantive transactions by health care facilities from the certificate of need requirement; and (iii) to authorize additional transactions by health care facilities which may receive an expedited review.

"(b) Verify the fairness of how the annual State Health Plan considers changing population projections and how residents choose health care services.

"(c) Verify the fairness of how the annual State Health Plan considers that residents travel to neighboring states to receive health care services.

"(d) Verify the fairness of the different planning districts applicable to each type of health care certificate of need activity by a facility. For example, General Hospital Service Areas compared to Long-Term Care Planning Districts, compared to Ambulatory Surgical Planning Areas, compared to Home Health Agency Planning Areas, compared to Perinatal Planning Areas, compared to Adolescent and Adult Psychiatric Facility Planning Areas, etc.

"(e) Verify the fairness and appropriateness of the formulas used to determine the need for health care services under the certificate of need law.

"(f) Review the existence of licensed beds listed in the Directory of Licensed Health Care Facilities which are unused and available for transfer to another facility or location under the certificate of need process, and the effect of these unused beds on the State Health Plan."

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Rule-making authority.

1. In general.

Decision of Mississippi State Department of Health to disapprove unsuccessful applicant's application for certificate of need for construction of 60-bed nursing home and to approve competing application was supported by substantial evidence and was neither arbitrary nor capricious, despite contention that unsuccessful application reflected lower expenditures and costs; by state law, Department could grant only one of competing applications in county, and State Health Officer conducted comparative analysis of both applications and determined successful application to be superior. Cain v. Mississippi State Dep't of Health, 666 So. 2d 506, 1995 Miss. LEXIS 621 (Miss. 1995).

Mississippi State Department of Health has authority to develop and establish criteria for granting certificates of need for construction of nursing homes and to objectively review information submitted in applications. Cain v. Mississippi State Dep't of Health, 666 So. 2d 506, 1995 Miss. LEXIS 621 (Miss. 1995).

Read together, §§ 41-7-187 and 41-7-189(2) authorize the Department of Health both to establish criteria for certificates of need and to review objectively information tendered in applications. The Department's power is limited only in that its action may not be arbitrary and capricious. Mississippi State Dep't of Health v. Southwest Mississippi Regional Medical Center, 580 So. 2d 1238, 1991 Miss. LEXIS 300 (Miss. 1991).

The State Health Officer did not act arbitrarily and capriciously when he denied an applicant's request for a certificate of need to offer cardiac catheterization services merely because he measured the population criteria using patient origin reports; while this method of population analysis may be imperfect, it does not approach an arbitrary or capricious action. Mississippi State Dep't of Health v. Southwest Mississippi Regional Medical Center, 580 So. 2d 1238, 1991 Miss. LEXIS 300 (Miss. 1991).

2. Rule-making authority.

Pursuant to the plain language of Miss. Code Ann. § 41-7-195, the Mississippi State Department of Health did not have the authority to grant an applicant an extension of its Certificate of Need (CON) after the CON had expired, nor the authority to promulgate a rule allowing holders of expired CONS the right to request an extension of their CONs. Dialysis Solution, LLC v. Miss. State Dep't of Health, 31 So. 3d 1204, 2010 Miss. LEXIS 81 (Miss. 2010).

OPINIONS OF THE ATTORNEY GENERAL

Legislation (Laws, 1982, ch. 482, § 9) which was never codified and which limits the fee for certificates of need applications is valid and binding upon the Department of Health. 2006 Miss. Op. Att'y Gen. 385.

§ 41-7-188. Certificate of need program; assessment of fees for reviewing applications; revenue from fees to be deposited in special funds for certain uses by State Department of Health.

(1) The State Department of Health is hereby authorized and empowered to assess fees for reviewing applications for certificates of need. The State Department of Health shall promulgate such rules and regulations as are necessary to effectuate the intent of this section in keeping with the standards hereinbelow:

(a) The fees assessed shall be uniform to all applicants.

(b) The fees assessed shall be nonrefundable.

(c) The fee shall be .5 of 1% of the amount of a proposed capital expenditure.

(d) The minimum fee shall not be less than Five Hundred Dollars ($500.00) regardless of the amount of the proposed capital expenditure, and the maximum fee permitted shall not exceed Twenty-five Thousand Dollars ($25,000.00), regardless of category.

(e) No application shall be deemed complete for the review process until such required fee is received by the State Department of Health.

(f) The required fee shall be paid to the State Department of Health and may be paid by check, draft or money order.

(g) There shall be no filing fee requirement for any application submitted by an agency, department, institution or facility which is operated, owned by and/or controlled by the State of Mississippi and which received operating and/or capital expenditure funds solely by appropriations from the Legislature of the State.

(h) There shall be no filing fee requirement for any health-care facility submitting an application for repairs or renovations determined by the State Department of Health in writing, to be necessary in order to avoid revocation of license and/or loss of certification for participation in the Medicaid and/or Medicare programs. Any proposed expenditure in excess of the amount determined by the State Department of Health to be necessary to accomplish the stated purposes shall be subject to the fee requirements of this section.

(2) The revenue derived from the fees imposed in subsection (1) of this section shall be deposited by the State Department of Health in a special fund, hereby created in the State Treasury, which is earmarked for use by the State Department of Health in conducting its health planning and certificate of need review activities. It is the intent of the Legislature that the health planning and certificate of need programs be continued for the protection of the individuals within the state requiring health care.

(3) The State Department of Health is authorized and empowered to assess fees for reviewing applications for certificates of authority for health maintenance organizations and for the issuance and renewal of such certificates of authority. The fees assessed shall be uniform to all applicants and to all holders of certificates of authority, and shall be nonrefundable. The fees for applications, original certificates of authority and renewals of certificates of authority shall not exceed Five Thousand Dollars ($5,000.00) each. The revenues derived from the fees assessed under this subsection shall be deposited by the department in a special fund hereby created in the State Treasury, which is earmarked for the use of the department in its regulation of the operation of health maintenance organizations.

HISTORY:

Laws, 1982, ch. 482, § 9; Laws, 1984, ch. 306; 1986, ch. 437, § 50; Laws, 1986, ch. 500, § 33; Laws, 1987, ch. 515, § 10 effective from and after July 1, 1987.

Editor's Notes —

This section was codified at the direction of the Co-Counsel of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

§ 41-7-189. Certificate of need program; publication of program description.

(1) Prior to review of new institutional health services or other proposals requiring a certificate of need, the State Department of Health shall disseminate to all health-care facilities and health maintenance organizations within the state, and shall publish in one or more newspapers of general circulation in the state, a description of the scope of coverage of the commission's certificate of need program. Whenever the scope of such coverage is revised, the State Department of Health shall disseminate and publish a revised description thereof in like manner.

(2) Selected statistical data and information obtained by the State Department of Health as the licensing agency for health-care facilities requiring licensure by the state and as the agency which provides certification for the Medicaid and/or Medicare program, may be utilized by the department in performing the statutory duties imposed upon it by any law over which it has authority, and regulations necessarily promulgated for such facilities to participate in the Medicaid and/or Medicare program; provided, however, that the names of individual patients shall not be revealed except in hearings or judicial proceedings regarding questions of licensure.

HISTORY:

Laws, 1979, ch. 451, § 10; Laws, 1982, ch. 482, § 2; Laws, 1985, ch. 534, § 6; Laws, 1986, ch. 437, § 39, eff from and after July 1, 1986.

Editor's Notes —

Laws of 1986, ch. 437, § 51, eff from and after July 1, 1986, amended Laws of 1985, ch. 534, § 15, by deleting the provision which would have repealed this section as of July 1, 1986.

JUDICIAL DECISIONS

1. In general.

Decision of Mississippi State Department of Health to disapprove unsuccessful applicant's application for certificate of need for construction of 60-bed nursing home and to approve competing application was supported by substantial evidence and was neither arbitrary nor capricious, despite contention that unsuccessful application reflected lower expenditures and costs; by state law, Department could grant only one of competing applications in county, and State Health Officer conducted comparative analysis of both applications and determined successful application to be superior. Cain v. Mississippi State Dep't of Health, 666 So. 2d 506, 1995 Miss. LEXIS 621 (Miss. 1995).

Mississippi State Department of Health has authority to develop and establish criteria for granting certificates of need for construction of nursing homes and to objectively review information submitted in applications. Cain v. Mississippi State Dep't of Health, 666 So. 2d 506, 1995 Miss. LEXIS 621 (Miss. 1995).

Read together, §§ 41-7-187 and 41-7-189(2) authorize the Department of Health both to establish criteria for certificates of need and to review objectively information tendered in applications. The Department's power is limited only in that its action may not be arbitrary and capricious. Mississippi State Dep't of Health v. Southwest Mississippi Regional Medical Center, 580 So. 2d 1238, 1991 Miss. LEXIS 300 (Miss. 1991).

The State Health Officer did not act arbitrarily and capriciously when he denied an applicant's request for a certificate of need to offer cardiac catheterization services merely because he measured the population criteria using patient origin reports; while this method of population analysis may be imperfect, it does not approach an arbitrary or capricious action. Mississippi State Dep't of Health v. Southwest Mississippi Regional Medical Center, 580 So. 2d 1238, 1991 Miss. LEXIS 300 (Miss. 1991).

§ 41-7-190. Certificate of need program; limitations on ownership of beds.

No corporation, foreign or domestic, partnership, individual(s) or association of such entities or of persons whatsoever, or any combination thereof, shall own, possess or exercise control over, in any manner, more than twenty percent (20%) of the beds in health-care facilities defined in Section 41-7-173(h)(iv) and (vi) in the defined health service area of the State of Mississippi.

Health-care facilities owned, operated or under control of the United States government, the state government or political subdivision of either are excluded from the limitation of this section.

HISTORY:

Laws, 1984, ch. 492, § 1; Laws, 1985, ch. 534, § 7, eff from and after July 1, 1985.

Editor's Notes —

Laws of 1986, ch. 437, §§ 1, 2, eff from and after July 1, 1986, provide as follows:

"SECTION 1. This act shall be known and may be cited as the Mississippi Health Services Reorganization Act of 1986.

"SECTION 2. All records, property and unexpended balances of appropriations, allocations or other funds of any agency abolished or affected by this act shall be transferred to the appropriate agency according to the merger of their functions under this act."

For a list of Code sections affected by Laws of 1986, Chapter 437, see the Statutory Tables Volume (2002), Table B.

Laws of 1986, ch. 437, § 51, eff from and after July 1, 1986, amended Laws of 1985, ch. 534, § 15, by deleting the provision which would have repealed this section as of July 1, 1986.

§ 41-7-191. Certificate of need; activities for which certificate is required.

(1) No person shall engage in any of the following activities without obtaining the required certificate of need:

(a) The construction, development or other establishment of a new health care facility, which establishment shall include the reopening of a health care facility that has ceased to operate for a period of sixty (60) months or more;

(b) The relocation of a health care facility or portion thereof, or major medical equipment, unless such relocation of a health care facility or portion thereof, or major medical equipment, which does not involve a capital expenditure by or on behalf of a health care facility, is within five thousand two hundred eighty (5,280) feet from the main entrance of the health care facility;

(c) Any change in the existing bed complement of any health care facility through the addition or conversion of any beds or the alteration, modernizing or refurbishing of any unit or department in which the beds may be located; however, if a health care facility has voluntarily delicensed some of its existing bed complement, it may later relicense some or all of its delicensed beds without the necessity of having to acquire a certificate of need. The State Department of Health shall maintain a record of the delicensing health care facility and its voluntarily delicensed beds and continue counting those beds as part of the state's total bed count for health care planning purposes. If a health care facility that has voluntarily delicensed some of its beds later desires to relicense some or all of its voluntarily delicensed beds, it shall notify the State Department of Health of its intent to increase the number of its licensed beds. The State Department of Health shall survey the health care facility within thirty (30) days of that notice and, if appropriate, issue the health care facility a new license reflecting the new contingent of beds. However, in no event may a health care facility that has voluntarily delicensed some of its beds be reissued a license to operate beds in excess of its bed count before the voluntary delicensure of some of its beds without seeking certificate of need approval;

(d) Offering of the following health services if those services have not been provided on a regular basis by the proposed provider of such services within the period of twelve (12) months prior to the time such services would be offered:

(i) Open-heart surgery services;

(ii) Cardiac catheterization services;

(iii) Comprehensive inpatient rehabilitation services;

(iv) Licensed psychiatric services;

(v) Licensed chemical dependency services;

(vi) Radiation therapy services;

(vii) Diagnostic imaging services of an invasive nature, i.e. invasive digital angiography;

(viii) Nursing home care as defined in subparagraphs (iv), (vi) and (viii) of Section 41-7-173(h);

(ix) Home health services;

(x) Swing-bed services;

(xi) Ambulatory surgical services;

(xii) Magnetic resonance imaging services;

(xiii) [Deleted]

(xiv) Long-term care hospital services;

(xv) Positron emission tomography (PET) services;

(e) The relocation of one or more health services from one physical facility or site to another physical facility or site, unless such relocation, which does not involve a capital expenditure by or on behalf of a health care facility, (i) is to a physical facility or site within five thousand two hundred eighty (5,280) feet from the main entrance of the health care facility where the health care service is located, or (ii) is the result of an order of a court of appropriate jurisdiction or a result of pending litigation in such court, or by order of the State Department of Health, or by order of any other agency or legal entity of the state, the federal government, or any political subdivision of either, whose order is also approved by the State Department of Health;

(f) The acquisition or otherwise control of any major medical equipment for the provision of medical services; however, (i) the acquisition of any major medical equipment used only for research purposes, and (ii) the acquisition of major medical equipment to replace medical equipment for which a facility is already providing medical services and for which the State Department of Health has been notified before the date of such acquisition shall be exempt from this paragraph; an acquisition for less than fair market value must be reviewed, if the acquisition at fair market value would be subject to review;

(g) Changes of ownership of existing health care facilities in which a notice of intent is not filed with the State Department of Health at least thirty (30) days prior to the date such change of ownership occurs, or a change in services or bed capacity as prescribed in paragraph (c) or (d) of this subsection as a result of the change of ownership; an acquisition for less than fair market value must be reviewed, if the acquisition at fair market value would be subject to review;

(h) The change of ownership of any health care facility defined in subparagraphs (iv), (vi) and (viii) of Section 41-7-173(h), in which a notice of intent as described in paragraph (g) has not been filed and if the Executive Director, Division of Medicaid, Office of the Governor, has not certified in writing that there will be no increase in allowable costs to Medicaid from revaluation of the assets or from increased interest and depreciation as a result of the proposed change of ownership;

(i) Any activity described in paragraphs (a) through (h) if undertaken by any person if that same activity would require certificate of need approval if undertaken by a health care facility;

(j) Any capital expenditure or deferred capital expenditure by or on behalf of a health care facility not covered by paragraphs (a) through (h);

(k) The contracting of a health care facility as defined in subparagraphs (i) through (viii) of Section 41-7-173(h) to establish a home office, subunit, or branch office in the space operated as a health care facility through a formal arrangement with an existing health care facility as defined in subparagraph (ix) of Section 41-7-173(h);

(*l*) The replacement or relocation of a health care facility designated as a critical access hospital shall be exempt from subsection (1) of this section so long as the critical access hospital complies with all applicable federal law and regulations regarding such replacement or relocation;

(m) Reopening a health care facility that has ceased to operate for a period of sixty (60) months or more, which reopening requires a certificate of need for the establishment of a new health care facility.

(2) The State Department of Health shall not grant approval for or issue a certificate of need to any person proposing the new construction of, addition to, or expansion of any health care facility defined in subparagraphs (iv) (skilled nursing facility) and (vi) (intermediate care facility) of Section 41-7-173(h) or the conversion of vacant hospital beds to provide skilled or intermediate nursing home care, except as hereinafter authorized:

(a) The department may issue a certificate of need to any person proposing the new construction of any health care facility defined in subparagraphs (iv) and (vi) of Section 41-7-173(h) as part of a life care retirement facility, in any county bordering on the Gulf of Mexico in which is located a National Aeronautics and Space Administration facility, not to exceed forty (40) beds. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the health care facility that were authorized under this paragraph (a).

(b) The department may issue certificates of need in Harrison County to provide skilled nursing home care for Alzheimer's disease patients and other patients, not to exceed one hundred fifty (150) beds. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the nursing facilities that were authorized under this paragraph (b).

(c) The department may issue a certificate of need for the addition to or expansion of any skilled nursing facility that is part of an existing continuing care retirement community located in Madison County, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (c), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The total number of beds that may be authorized under the authority of this paragraph (c) shall not exceed sixty (60) beds.

(d) The State Department of Health may issue a certificate of need to any hospital located in DeSoto County for the new construction of a skilled nursing facility, not to exceed one hundred twenty (120) beds, in DeSoto County. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the nursing facility that were authorized under this paragraph (d).

(e) The State Department of Health may issue a certificate of need for the construction of a nursing facility or the conversion of beds to nursing facility beds at a personal care facility for the elderly in Lowndes County that is owned and operated by a Mississippi nonprofit corporation, not to exceed sixty (60) beds. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the nursing facility that were authorized under this paragraph (e).

(f) The State Department of Health may issue a certificate of need for conversion of a county hospital facility in Itawamba County to a nursing facility, not to exceed sixty (60) beds, including any necessary construction, renovation or expansion. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the nursing facility that were authorized under this paragraph (f).

(g) The State Department of Health may issue a certificate of need for the construction or expansion of nursing facility beds or the conversion of other beds to nursing facility beds in either Hinds, Madison or Rankin

County, not to exceed sixty (60) beds. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the nursing facility that were authorized under this paragraph (g).

(h) The State Department of Health may issue a certificate of need for the construction or expansion of nursing facility beds or the conversion of other beds to nursing facility beds in either Hancock, Harrison or Jackson County, not to exceed sixty (60) beds. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the facility that were authorized under this paragraph (h).

(i) The department may issue a certificate of need for the new construction of a skilled nursing facility in Leake County, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (i), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The provision of Section 41-7-193(1) regarding substantial compliance of the projection of need as reported in the current State Health Plan is waived for the purposes of this paragraph. The total number of nursing facility beds that may be authorized by any certificate of need issued under this paragraph (i) shall not exceed sixty (60) beds. If the skilled nursing facility authorized by the certificate of need issued under this paragraph is not constructed and fully operational within eighteen (18) months after July 1, 1994, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need, if it is still outstanding, and shall not issue a license for the skilled nursing facility at any time after the expiration of the eighteen-month period.

(j) The department may issue certificates of need to allow any existing freestanding long-term care facility in Tishomingo County and Hancock County that on July 1, 1995, is licensed with fewer than sixty (60) beds. For the purposes of this paragraph (j), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the long-term care facilities that were authorized under this paragraph (j).

(k) The department may issue a certificate of need for the construction of a nursing facility at a continuing care retirement community in Lowndes County. The total number of beds that may be authorized under the authority of this paragraph (k) shall not exceed sixty (60) beds. From and after July 1, 2001, the prohibition on the facility participating in the Medicaid program (Section 43-13-101 et seq.) that was a condition of issuance of the certificate of need under this paragraph (k) shall be revised as follows: The nursing facility may participate in the Medicaid program from and after July 1, 2001, if the owner of the facility on July 1, 2001, agrees in writing that no more than thirty (30) of the beds at the facility will be certified for participation in the Medicaid program, and that no claim will be submitted for Medicaid reimbursement for more than thirty (30) patients in the facility in any month or for any patient in the facility who is in a bed that is not Medicaid-certified. This written agreement by the owner of the facility shall be a condition of licensure of the facility, and the agreement shall be fully binding on any subsequent owner of the facility if the ownership of the facility is transferred at any time after July 1, 2001. After this written agreement is executed, the Division of Medicaid and the State Department of Health shall not certify more than thirty (30) of the beds in the facility for participation in the Medicaid program. If the facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than thirty (30) patients who are participating in the Medicaid program, the State Department of Health shall revoke the license of the facility, at the time that the department determines, after a hearing complying with due process, that the facility has violated the written agreement.

(*l*) Provided that funds are specifically appropriated therefor by the Legislature, the department may issue a certificate of need to a rehabilitation hospital in Hinds County for the construction of a sixty-bed long-term care nursing facility dedicated to the care and treatment of persons with severe disabilities including persons with spinal cord and closed-head injuries and ventilator dependent patients. The provisions of Section 41-7-193(1) regarding substantial compliance with projection of need as reported in the current State Health Plan are waived for the purpose of this paragraph.

(m) The State Department of Health may issue a certificate of need to a county-owned hospital in the Second Judicial District of Panola County for the conversion of not more than seventy-two (72) hospital beds to nursing facility beds, provided that the recipient of the certificate of need agrees in writing that none of the beds at the nursing facility will be certified for participation in the Medicaid program (Section 43-13-101 et seq.), and that no claim will be submitted for Medicaid reimbursement in the nursing facility in any day or for any patient in the nursing facility. This written agreement by the recipient of the certificate of need shall be a condition of the issuance of the certificate of need under this paragraph, and the agreement shall be fully binding on any subsequent owner of the nursing facility if the ownership of the nursing facility is transferred at any time after the issuance of the certificate of need. After this written agreement is executed, the Division of Medicaid and the State Department of Health shall not certify any of the beds in the nursing facility for participation in the Medicaid program. If the nursing facility violates the terms of the written agreement by admitting or keeping in the nursing facility on a regular or continuing basis any patients who are participating in the Medicaid program, the State Department of Health shall revoke the license of the nursing facility, at the time that the department determines, after a hearing complying with due process, that the nursing facility has violated the condition upon which the certificate of need was issued, as provided in this paragraph and in the written agreement. If the certificate of need authorized under this paragraph is not issued within twelve (12) months after July 1, 2001, the department shall deny the application for the certificate of need and shall not issue the certificate of need at any time after the twelve-month period, unless the issuance is contested. If the certificate of need is issued and substantial construction of the nursing facility beds has not commenced within eighteen (18) months after July 1, 2001, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need if it is still outstanding, and the department shall not issue a license for the nursing facility at any time after the eighteen-month period. However, if the issuance of the certificate of need is contested, the department shall require substantial construction of the nursing facility beds within six (6) months after final adjudication on the issuance of the certificate of need.

(n) The department may issue a certificate of need for the new construction, addition or conversion of skilled nursing facility beds in Madison County, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (n), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The total number of nursing facility beds that may be authorized by any certificate of need issued under this paragraph (n) shall not exceed sixty (60) beds. If the certificate of need authorized under this paragraph is not issued within twelve (12) months after July 1, 1998, the department shall deny the application for the certificate of need and shall not issue the certificate of need at any time after the twelve-month period, unless the issuance is contested. If the certificate of need is issued and substantial construction of the nursing facility beds has not commenced within eighteen (18) months after July 1, 1998, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need if it is still outstanding, and the department shall not issue a license for the nursing facility at any time after the eighteen-month period. However, if the issuance of the certificate of need is contested, the department shall require substantial construction of the nursing facility beds within six (6) months after final adjudication on the issuance of the certificate of need.

(o) The department may issue a certificate of need for the new construction, addition or conversion of skilled nursing facility beds in Leake County, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (o), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The total number of nursing facility beds that may be authorized by any certificate of need issued under this paragraph (o) shall not exceed sixty (60) beds. If the certificate of need authorized under this paragraph is not issued within twelve (12) months after July 1, 2001, the department shall deny the application for the certificate of need and shall not issue the certificate of need at any time after the twelve-month period, unless the issuance is contested. If the certificate of need is issued and substantial construction of the nursing facility beds has not commenced within eighteen (18) months after July 1, 2001, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need if it is still outstanding, and the department shall not issue a license for the nursing facility at any time after the eighteen-month period. However, if the issuance of the certificate of need is contested, the department shall require substantial construction of the nursing facility beds within six (6) months after final adjudication on the issuance of the certificate of need.

(p) The department may issue a certificate of need for the construction of a municipally owned nursing facility within the Town of Belmont in Tishomingo County, not to exceed sixty (60) beds, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (p), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The provision of Section 41-7-193(1) regarding substantial compliance of the projection of need as reported in the current State Health Plan is waived for the purposes of this paragraph. If the certificate of need authorized under this paragraph is not issued within twelve (12) months after July 1, 1998, the department shall deny the application for the certificate of need and shall not issue the certificate of need at any time after the twelve-month period, unless the issuance is contested. If the certificate of need is issued and substantial construction of the nursing facility beds has not commenced within eighteen (18) months after July 1, 1998, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need if it is still outstanding, and the department shall not issue a license for the nursing facility at any time after the eighteen-month period. However, if the issuance of the certificate of need is contested, the department shall require substantial construction of the nursing facility beds within six (6) months after final adjudication on the issuance of the certificate of need.

(q)(i) Beginning on July 1, 1999, the State Department of Health shall issue certificates of need during each of the next four (4) fiscal years for the construction or expansion of nursing facility beds or the conversion of other beds to nursing facility beds in each county in the state having a need for fifty (50) or more additional nursing facility beds, as shown in the fiscal year 1999 State Health Plan, in the manner provided in this paragraph (q). The total number of nursing facility beds that may be authorized by any certificate of need authorized under this paragraph (q) shall not exceed sixty (60) beds.

(ii) Subject to the provisions of subparagraph (v), during each of the next four (4) fiscal years, the department shall issue six (6) certificates of need for new nursing facility beds, as follows: During fiscal years 2000, 2001 and 2002, one (1) certificate of need shall be issued for new nursing facility beds in the county in each of the four (4) Long-Term Care Planning Districts designated in the fiscal year 1999 State Health Plan that has the highest need in the district for those beds; and two (2) certificates of need shall be issued for new nursing facility beds in the two (2) counties from the state at large that have the highest need in the state for those beds, when considering the need on a statewide basis and without regard to the Long-Term Care Planning Districts in which the counties are located. During fiscal year 2003, one (1) certificate of need shall be issued for new nursing facility beds in any county having a need for fifty (50) or more additional nursing facility beds, as shown in the fiscal year 1999 State Health Plan, that has not received a certificate of need under this paragraph (q) during the three (3) previous fiscal years. During fiscal year 2000, in addition to the six (6) certificates of need authorized in this subparagraph, the department also shall issue a certificate of need for new nursing facility beds in Amite County and a certificate of need for new nursing facility beds in Carroll County.

(iii) Subject to the provisions of subparagraph (v), the certificate of need issued under subparagraph (ii) for nursing facility beds in each Long-Term Care Planning District during each fiscal year shall first be available for nursing facility beds in the county in the district having the highest need for those beds, as shown in the fiscal year 1999 State Health Plan. If there are no applications for a certificate of need for nursing facility beds in the county having the highest need for those beds by the date specified by the department, then the certificate of need shall be available for nursing facility beds in other counties in the district in descending order of the need for those beds, from the county with the second highest need to the county with the lowest need, until an application is received for nursing facility beds in an eligible county in the district.

(iv) Subject to the provisions of subparagraph (v), the certificate of need issued under subparagraph (ii) for nursing facility beds in the two (2) counties from the state at large during each fiscal year shall first be available for nursing facility beds in the two (2) counties that have the highest need in the state for those beds, as shown in the fiscal year 1999 State Health Plan, when considering the need on a statewide basis and without regard to the Long-Term Care Planning Districts in which the counties are located. If there are no applications for a certificate of need for nursing facility beds in either of the two (2) counties having the highest need for those beds on a statewide basis by the date specified by the department, then the certificate of need shall be available for nursing facility beds in other counties from the state at large in descending order of the need for those beds on a statewide basis, from the county with the second highest need to the county with the lowest need, until an application is received for nursing facility beds in an eligible county from the state at large.

(v) If a certificate of need is authorized to be issued under this paragraph (q) for nursing facility beds in a county on the basis of the need in the Long-Term Care Planning District during any fiscal year of the four-year period, a certificate of need shall not also be available under this paragraph (q) for additional nursing facility beds in that county on the basis of the need in the state at large, and that county shall be excluded in determining which counties have the highest need for nursing facility beds in the state at large for that fiscal year. After a certificate of need has been issued under this paragraph (q) for nursing facility beds in a county during any fiscal year of the four-year period, a certificate of need shall not be available again under this paragraph (q) for additional nursing facility beds in that county during the four-year period, and that county shall be excluded in determining which counties have the highest need for nursing facility beds in succeeding fiscal years.

(vi) If more than one (1) application is made for a certificate of need for nursing home facility beds available under this paragraph (q), in Yalobusha, Newton or Tallahatchie County, and one (1) of the applicants is a county-owned hospital located in the county where the nursing facility beds are available, the department shall give priority to the county-owned hospital in granting the certificate of need if the following conditions are met:

1. The county-owned hospital fully meets all applicable criteria and standards required to obtain a certificate of need for the nursing facility beds; and

2. The county-owned hospital's qualifications for the certificate of need, as shown in its application and as determined by the department, are at least equal to the qualifications of the other applicants for the certificate of need.

(r)(i) Beginning on July 1, 1999, the State Department of Health shall issue certificates of need during each of the next two (2) fiscal years for the construction or expansion of nursing facility beds or the conversion of other beds to nursing facility beds in each of the four (4) Long-Term Care Planning Districts designated in the fiscal year 1999 State Health Plan, to provide care exclusively to patients with Alzheimer's disease.

(ii) Not more than twenty (20) beds may be authorized by any certificate of need issued under this paragraph (r), and not more than a total of sixty (60) beds may be authorized in any Long-Term Care Planning District by all certificates of need issued under this paragraph (r). However, the total number of beds that may be authorized by all certificates of need issued under this paragraph (r) during any fiscal year shall not exceed one hundred twenty (120) beds, and the total number of beds that may be authorized in any Long-Term Care Planning District during any fiscal year shall not exceed forty (40) beds. Of the certificates of need that are issued for each Long-Term Care Planning District during the next two (2) fiscal years, at least one (1) shall be issued for beds in the northern part of the district, at least one (1) shall be issued for beds in the central part of the district, and at least one (1) shall be issued for beds in the southern part of the district.

(iii) The State Department of Health, in consultation with the Department of Mental Health and the Division of Medicaid, shall develop and prescribe the staffing levels, space requirements and other standards and requirements that must be met with regard to the nursing facility beds authorized under this paragraph (r) to provide care exclusively to patients with Alzheimer's disease.

(s) The State Department of Health may issue a certificate of need to a nonprofit skilled nursing facility using the Green House model of skilled nursing care and located in Yazoo City, Yazoo County, Mississippi, for the construction, expansion or conversion of not more than nineteen (19) nursing facility beds. For purposes of this paragraph (s), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan and the provisions of Section 41-7-197 requiring a formal certificate of need hearing process are waived. There shall be no prohibition or restrictions on participation in the Medicaid program for the person receiving the certificate of need authorized under this paragraph (s).

(t) The State Department of Health shall issue certificates of need to the owner of a nursing facility in operation at the time of Hurricane Katrina in Hancock County that was not operational on December 31, 2005, because of damage sustained from Hurricane Katrina to authorize the following: (i) the construction of a new nursing facility in Harrison County; (ii) the relocation of forty-nine (49) nursing facility beds from the Hancock County facility to the new Harrison County facility; (iii) the establishment of not more than twenty (20) non-Medicaid nursing facility beds at the Hancock County facility; and (iv) the establishment of not more than twenty (20) non-Medicaid beds at the new Harrison County facility. The certificates of need that authorize the non-Medicaid nursing facility beds under subparagraphs (iii) and (iv) of this paragraph (t) shall be subject to the following conditions: The owner of the Hancock County facility and the new Harrison County facility must agree in writing that no more than fifty (50) of the beds at the Hancock County facility and no more than forty-nine (49) of the beds at the Harrison County facility will be certified for participation in the Medicaid program, and that no claim will be submitted for Medicaid reimbursement for more than fifty (50) patients in the Hancock County facility in any month, or for more than forty-nine (49) patients in the Harrison County facility in any month, or for any patient in either facility who is in a bed that is not Medicaid-certified. This written agreement by the owner of the nursing facilities shall be a condition of the issuance of the certificates of need under this paragraph (t), and the agreement shall be fully binding on any later owner or owners of either facility if the ownership of either facility is transferred at any time after the certificates of need are issued. After this written agreement is executed, the Division of Medicaid and the State Department of Health shall not certify more than fifty (50) of the beds at the Hancock County facility or more than forty-nine (49) of the beds at the Harrison County facility for participation in the Medicaid program. If the Hancock County facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than fifty (50) patients who are participating in the Medicaid program, or if the Harrison County facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than forty-nine (49) patients who are participating in the Medicaid program, the State Department of Health shall revoke the license of the facility that is in violation of the agreement, at the time that the department determines, after a hearing complying with due process, that the facility has violated the agreement.

(u) The State Department of Health shall issue a certificate of need to a nonprofit venture for the establishment, construction and operation of a skilled nursing facility of not more than sixty (60) beds to provide skilled nursing care for ventilator dependent or otherwise medically dependent pediatric patients who require medical and nursing care or rehabilitation services to be located in a county in which an academic medical center and a children's hospital are located, and for any construction and for the acquisition of equipment related to those beds. The facility shall be authorized to keep such ventilator dependent or otherwise medically dependent pediatric patients beyond age twenty-one (21) in accordance with regulations of the State Board of Health. For purposes of this paragraph (u), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived, and the provisions of Section 41-7-197 requiring a formal certificate of need hearing process are waived. The beds authorized by this paragraph shall be counted as pediatric skilled nursing facility beds for health planning purposes under Section 41-7-171 et seq. There shall be no prohibition of or restrictions on participation in the Medicaid program for the person receiving the certificate of need authorized by this paragraph.

(3) The State Department of Health may grant approval for and issue certificates of need to any person proposing the new construction of, addition to, conversion of beds of or expansion of any health care facility defined in subparagraph (x) (psychiatric residential treatment facility) of Section 41-7-173(h). The total number of beds which may be authorized by such certificates of need shall not exceed three hundred thirty-four (334) beds for the entire state.

(a) Of the total number of beds authorized under this subsection, the department shall issue a certificate of need to a privately owned psychiatric residential treatment facility in Simpson County for the conversion of sixteen (16) intermediate care facility for the mentally retarded (ICF-MR) beds to psychiatric residential treatment facility beds, provided that facility agrees in writing that the facility shall give priority for the use of those sixteen (16) beds to Mississippi residents who are presently being treated in out-of-state facilities.

(b) Of the total number of beds authorized under this subsection, the department may issue a certificate or certificates of need for the construction or expansion of psychiatric residential treatment facility beds or the conversion of other beds to psychiatric residential treatment facility beds in Warren County, not to exceed sixty (60) psychiatric residential treatment facility beds, provided that the facility agrees in writing that no more than thirty (30) of the beds at the psychiatric residential treatment facility will be certified for participation in the Medicaid program (Section 43-13-101 et seq.) for the use of any patients other than those who are participating only in the Medicaid program of another state, and that no claim will be submitted to the Division of Medicaid for Medicaid reimbursement for more than thirty (30) patients in the psychiatric residential treatment facility in any day or for any patient in the psychiatric residential treatment facility who is in a bed that is not Medicaid-certified. This written agreement by the recipient of the certificate of need shall be a condition of the issuance of the certificate of need under this paragraph, and the agreement shall be fully binding on any subsequent owner of the psychiatric residential treatment facility if the ownership of the facility is transferred at any time after the issuance of the certificate of need. After this written agreement is executed, the Division of Medicaid and the State Department of Health shall not certify more than thirty (30) of the beds in the psychiatric residential treatment facility for participation in the Medicaid program for the use of any patients other than those who are participating only in the Medicaid program of another state. If the psychiatric residential treatment facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than thirty (30) patients who are participating in the Mississippi Medicaid program, the State Department of Health shall revoke the license of the facility, at the time that the department determines, after a hearing complying with due process, that the facility has violated the condition upon which the certificate of need was issued, as provided in this paragraph and in the written agreement.

The State Department of Health, on or before July 1, 2002, shall transfer the certificate of need authorized under the authority of this paragraph (b), or reissue the certificate of need if it has expired, to River Region Health System.

(c) Of the total number of beds authorized under this subsection, the department shall issue a certificate of need to a hospital currently operating Medicaid-certified acute psychiatric beds for adolescents in DeSoto County, for the establishment of a forty-bed psychiatric residential treatment facility in DeSoto County, provided that the hospital agrees in writing (i) that the hospital shall give priority for the use of those forty (40) beds to Mississippi residents who are presently being treated in out-of-state facilities, and (ii) that no more than fifteen (15) of the beds at the psychiatric residential treatment facility will be certified for participation in the Medicaid program (Section 43-13-101 et seq.), and that no claim will be submitted for Medicaid reimbursement for more than fifteen (15) patients in the psychiatric residential treatment facility in any day or for any patient in the psychiatric residential treatment facility who is in a bed that is not Medicaid-certified. This written agreement by the recipient of the certificate of need shall be a condition of the issuance of the certificate of need under this paragraph, and the agreement shall be fully binding on any subsequent owner of the psychiatric residential treatment facility if the ownership of the facility is transferred at any time after the issuance of the certificate of need. After this written agreement is executed, the Division of Medicaid and the State Department of Health shall not certify more than fifteen (15) of the beds in the psychiatric residential treatment facility for participation in the Medicaid program. If the psychiatric residential treatment facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than fifteen (15) patients who are participating in the Medicaid program, the State Department of Health shall revoke the license of the facility, at the time that the department determines, after a hearing complying with due process, that the facility has violated the condition upon which the certificate of need was issued, as provided in this paragraph and in the written agreement.

(d) Of the total number of beds authorized under this subsection, the department may issue a certificate or certificates of need for the construction or expansion of psychiatric residential treatment facility beds or the conversion of other beds to psychiatric treatment facility beds, not to exceed thirty (30) psychiatric residential treatment facility beds, in either Alcorn, Tishomingo, Prentiss, Lee, Itawamba, Monroe, Chickasaw, Pontotoc, Calhoun, Lafayette, Union, Benton or Tippah County.

(e) Of the total number of beds authorized under this subsection (3) the department shall issue a certificate of need to a privately owned, nonprofit psychiatric residential treatment facility in Hinds County for an eight-bed expansion of the facility, provided that the facility agrees in writing that the facility shall give priority for the use of those eight (8) beds to Mississippi residents who are presently being treated in out-of-state facilities.

(f) The department shall issue a certificate of need to a one-hundred-thirty-four-bed specialty hospital located on twenty-nine and forty-four one-hundredths (29.44) commercial acres at 5900 Highway 39 North in Meridian (Lauderdale County), Mississippi, for the addition, construction or expansion of child/adolescent psychiatric residential treatment facility beds in Lauderdale County. As a condition of issuance of the certificate of need under this paragraph, the facility shall give priority in admissions to the child/adolescent psychiatric residential treatment facility beds authorized under this paragraph to patients who otherwise would require out-of-state placement. The Division of Medicaid, in conjunction with the Department of Human Services, shall furnish the facility a list of all out-of-state patients on a quarterly basis. Furthermore, notice shall also be provided to the parent, custodial parent or guardian of each out-of-state patient notifying them of the priority status granted by this paragraph. For purposes of this paragraph, the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of child/adolescent psychiatric residential treatment facility beds that may be authorized under the authority of this paragraph shall be sixty (60) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the person receiving the certificate of need authorized under this paragraph or for the beds converted pursuant to the authority of that certificate of need.

(4)(a) From and after July 1, 1993, the department shall not issue a certificate of need to any person for the new construction of any hospital, psychiatric hospital or chemical dependency hospital that will contain any child/adolescent psychiatric or child/adolescent chemical dependency beds, or for the conversion of any other health care facility to a hospital, psychiatric hospital or chemical dependency hospital that will contain any child/adolescent psychiatric or child/adolescent chemical dependency beds, or for the addition of any child/adolescent psychiatric or child/adolescent chemical dependency beds in any hospital, psychiatric hospital or chemical dependency hospital, or for the conversion of any beds of another category in any hospital, psychiatric hospital or chemical dependency hospital to child/adolescent psychiatric or child/adolescent chemical dependency beds, except as hereinafter authorized:

(i) The department may issue certificates of need to any person for any purpose described in this subsection, provided that the hospital, psychiatric hospital or chemical dependency hospital does not participate in the Medicaid program (Section 43-13-101 et seq.) at the time of the application for the certificate of need and the owner of the hospital, psychiatric hospital or chemical dependency hospital agrees in writing that the hospital, psychiatric hospital or chemical dependency hospital will not at any time participate in the Medicaid program or admit or keep any patients who are participating in the Medicaid program in the hospital, psychiatric hospital or chemical dependency hospital. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the hospital, psychiatric hospital or chemical dependency hospital, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the hospital, psychiatric hospital or chemical dependency hospital will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this subparagraph (i), and if such hospital, psychiatric hospital or chemical dependency hospital at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the hospital, psychiatric hospital or chemical dependency hospital who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the hospital, psychiatric hospital or chemical dependency hospital, at the time that the department determines, after a hearing complying with due process, that the hospital, psychiatric hospital or chemical dependency hospital has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this subparagraph (i) and in the written agreement by the recipient of the certificate of need.

(ii) The department may issue a certificate of need for the conversion of existing beds in a county hospital in Choctaw County from acute care beds to child/adolescent chemical dependency beds. For purposes of this subparagraph (ii), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of beds that may be authorized under authority of this subparagraph shall not exceed twenty (20) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the hospital receiving the certificate of need authorized under this subparagraph or for the beds converted pursuant to the authority of that certificate of need.

(iii) The department may issue a certificate or certificates of need for the construction or expansion of child/adolescent psychiatric beds or the conversion of other beds to child/adolescent psychiatric beds in Warren County. For purposes of this subparagraph (iii), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of beds that may be authorized under the authority of this subparagraph shall not exceed twenty (20) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the person receiving the certificate of need authorized under this subparagraph or for the beds converted pursuant to the authority of that certificate of need.

If by January 1, 2002, there has been no significant commencement of construction of the beds authorized under this subparagraph (iii), or no significant action taken to convert existing beds to the beds authorized under this subparagraph, then the certificate of need that was previously issued under this subparagraph shall expire. If the previously issued certificate of need expires, the department may accept applications for issuance of another certificate of need for the beds authorized under this subparagraph, and may issue a certificate of need to authorize the construction, expansion or conversion of the beds authorized under this subparagraph.

(iv) The department shall issue a certificate of need to the Region 7 Mental Health/Retardation Commission for the construction or expansion of child/adolescent psychiatric beds or the conversion of other beds to child/adolescent psychiatric beds in any of the counties served by the commission. For purposes of this subparagraph (iv), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of beds that may be authorized under the authority of this subparagraph shall not exceed twenty (20) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the person receiving the certificate of need authorized under this subparagraph or for the beds converted pursuant to the authority of that certificate of need.

(v) The department may issue a certificate of need to any county hospital located in Leflore County for the construction or expansion of adult psychiatric beds or the conversion of other beds to adult psychiatric beds, not to exceed twenty (20) beds, provided that the recipient of the certificate of need agrees in writing that the adult psychiatric beds will not at any time be certified for participation in the Medicaid program and that the hospital will not admit or keep any patients who are participating in the Medicaid program in any of such adult psychiatric beds. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the hospital if the ownership of the hospital is transferred at any time after the issuance of the certificate of need. Agreement that the adult psychiatric beds will not be certified for participation in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this subparagraph (v), and if such hospital at any time after the issuance of the certificate of need, regardless of the ownership of the hospital, has any of such adult psychiatric beds certified for participation in the Medicaid program or admits or keeps any Medicaid patients in such adult psychiatric beds, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the hospital at the time that the department determines, after a hearing complying with due process, that the hospital has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this subparagraph and in the written agreement by the recipient of the certificate of need.

(vi) The department may issue a certificate or certificates of need for the expansion of child psychiatric beds or the conversion of other beds to child psychiatric beds at the University of Mississippi Medical Center. For purposes of this subparagraph (vi), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of beds that may be authorized under the authority of this subparagraph shall not exceed fifteen (15) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the hospital receiving the certificate of need authorized under this subparagraph or for the beds converted pursuant to the authority of that certificate of need.

(b) From and after July 1, 1990, no hospital, psychiatric hospital or chemical dependency hospital shall be authorized to add any child/adolescent psychiatric or child/adolescent chemical dependency beds or convert any beds of another category to child/adolescent psychiatric or child/adolescent chemical dependency beds without a certificate of need under the authority of subsection (1)(c) of this section.

(5) The department may issue a certificate of need to a county hospital in Winston County for the conversion of fifteen (15) acute care beds to geriatric psychiatric care beds.

(6) The State Department of Health shall issue a certificate of need to a Mississippi corporation qualified to manage a long-term care hospital as defined in Section 41-7-173(h) (xii) in Harrison County, not to exceed eighty (80) beds, including any necessary renovation or construction required for licensure and certification, provided that the recipient of the certificate of need agrees in writing that the long-term care hospital will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the long-term care hospital who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the long-term care hospital, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the long-term care hospital will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this subsection (6), and if such long-term care hospital at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the long-term care hospital, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this subsection and in the written agreement by the recipient of the certificate of need. For purposes of this subsection, the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived.

(7) The State Department of Health may issue a certificate of need to any hospital in the state to utilize a portion of its beds for the “swing-bed” concept.

Any such hospital must be in conformance with the federal regulations regarding such swing-bed concept at the time it submits its application for a certificate of need to the State Department of Health, except that such hospital may have more licensed beds or a higher average daily census (ADC) than the maximum number specified in federal regulations for participation in the swing-bed program. Any hospital meeting all federal requirements for participation in the swing-bed program which receives such certificate of need shall render services provided under the swing-bed concept to any patient eligible for Medicare (Title XVIII of the Social Security Act) who is certified by a physician to be in need of such services, and no such hospital shall permit any patient who is eligible for both Medicaid and Medicare or eligible only for Medicaid to stay in the swing beds of the hospital for more than thirty (30) days per admission unless the hospital receives prior approval for such patient from the Division of Medicaid, Office of the Governor. Any hospital having more licensed beds or a higher average daily census (ADC) than the maximum number specified in federal regulations for participation in the swing-bed program which receives such certificate of need shall develop a procedure to insure that before a patient is allowed to stay in the swing beds of the hospital, there are no vacant nursing home beds available for that patient located within a fifty-mile radius of the hospital. When any such hospital has a patient staying in the swing beds of the hospital and the hospital receives notice from a nursing home located within such radius that there is a vacant bed available for that patient, the hospital shall transfer the patient to the nursing home within a reasonable time after receipt of the notice. Any hospital which is subject to the requirements of the two (2) preceding sentences of this subsection may be suspended from participation in the swing-bed program for a reasonable period of time by the State Department of Health if the department, after a hearing complying with due process, determines that the hospital has failed to comply with any of those requirements.

(8) The Department of Health shall not grant approval for or issue a certificate of need to any person proposing the new construction of, addition to or expansion of a health care facility as defined in subparagraph (viii) of Section 41-7-173(h), except as hereinafter provided: The department may issue a certificate of need to a nonprofit corporation located in Madison County, Mississippi, for the construction, expansion or conversion of not more than twenty (20) beds in a community living program for developmentally disabled adults in a facility as defined in subparagraph (viii) of Section 41-7-173(h). For purposes of this subsection (8), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan and the provisions of Section 41-7-197 requiring a formal certificate of need hearing process are waived. There shall be no prohibition or restrictions on participation in the Medicaid program for the person receiving the certificate of need authorized under this subsection (8).

(9) The Department of Health shall not grant approval for or issue a certificate of need to any person proposing the establishment of, or expansion of the currently approved territory of, or the contracting to establish a home

office, subunit or branch office within the space operated as a health care facility as defined in Section 41-7-173(h)(i) through (viii) by a health care facility as defined in subparagraph (ix) of Section 41-7-173(h).

(10) Health care facilities owned and/or operated by the state or its agencies are exempt from the restraints in this section against issuance of a certificate of need if such addition or expansion consists of repairing or renovation necessary to comply with the state licensure law. This exception shall not apply to the new construction of any building by such state facility. This exception shall not apply to any health care facilities owned and/or operated by counties, municipalities, districts, unincorporated areas, other defined persons, or any combination thereof.

(11) The new construction, renovation or expansion of or addition to any health care facility defined in subparagraph (ii) (psychiatric hospital), subparagraph (iv) (skilled nursing facility), subparagraph (vi) (intermediate care facility), subparagraph (viii) (intermediate care facility for the mentally retarded) and subparagraph (x) (psychiatric residential treatment facility) of Section 41-7-173(h) which is owned by the State of Mississippi and under the direction and control of the State Department of Mental Health, and the addition of new beds or the conversion of beds from one category to another in any such defined health care facility which is owned by the State of Mississippi and under the direction and control of the State Department of Mental Health, shall not require the issuance of a certificate of need under Section 41-7-171 et seq., notwithstanding any provision in Section 41-7-171 et seq. to the contrary.

(12) The new construction, renovation or expansion of or addition to any veterans homes or domiciliaries for eligible veterans of the State of Mississippi as authorized under Section 35-1-19 shall not require the issuance of a certificate of need, notwithstanding any provision in Section 41-7-171 et seq. to the contrary.

(13) The repair or the rebuilding of an existing, operating health care facility that sustained significant damage from a natural disaster that occurred after April 15, 2014, in an area that is proclaimed a disaster area or subject to a state of emergency by the Governor or by the President of the United States shall be exempt from all of the requirements of the Mississippi Certificate of Need Law (Section 41-7-171 et seq.) and any and all rules and regulations promulgated under that law, subject to the following conditions:

(a) The repair or the rebuilding of any such damaged health care facility must be within one (1) mile of the pre-disaster location of the campus of the damaged health care facility, except that any temporary post-disaster health care facility operating location may be within five (5) miles of the pre-disaster location of the damaged health care facility;

(b) The repair or the rebuilding of the damaged health care facility (i) does not increase or change the complement of its bed capacity that it had before the Governor's or the President's proclamation, (ii) does not increase or change its levels and types of health care services that it provided before the Governor's or the President's proclamation, and (iii) does not rebuild in a different county; however, this paragraph does not restrict or prevent a health care facility from decreasing its bed capacity that it had before the Governor's or the President's proclamation, or from decreasing the levels of or decreasing or eliminating the types of health care services that it provided before the Governor's or the President's proclamation, when the damaged health care facility is repaired or rebuilt;

(c) The exemption from Certificate of Need Law provided under this subsection (13) is valid for only five (5) years from the date of the Governor's or the President's proclamation. If actual construction has not begun within that five-year period, the exemption provided under this subsection is inapplicable; and

(d) The Division of Health Facilities Licensure and Certification of the State Department of Health shall provide the same oversight for the repair or the rebuilding of the damaged health care facility that it provides to all health care facility construction projects in the state.

For the purposes of this subsection (13), "significant damage" to a health care facility means damage to the health care facility requiring an expenditure of at least One Million Dollars ($1,000,000.00).

(14) The State Department of Health shall issue a certificate of need to any hospital which is currently licensed for two hundred fifty (250) or more acute care beds and is located in any general hospital service area not having a comprehensive cancer center, for the establishment and equipping of such a center which provides facilities and services for outpatient radiation oncology therapy, outpatient medical oncology therapy, and appropriate support services including the provision of radiation therapy services. The provisions of Section 41-7-193(1) regarding substantial compliance with the projection of need as reported in the current State Health Plan are waived for the purpose of this subsection.

(15) The State Department of Health may authorize the transfer of hospital beds, not to exceed sixty (60) beds, from the North Panola Community Hospital to the South Panola Community Hospital. The authorization for the transfer of those beds shall be exempt from the certificate of need review process.

(16) The State Department of Health shall issue any certificates of need necessary for Mississippi State University and a public or private health care provider to jointly acquire and operate a linear accelerator and a magnetic resonance imaging unit. Those certificates of need shall cover all capital expenditures related to the project between Mississippi State University and the health care provider, including, but not limited to, the acquisition of the linear accelerator, the magnetic resonance imaging unit and other radiological modalities; the offering of linear accelerator and magnetic resonance imaging services; and the cost of construction of facilities in which to locate these services. The linear accelerator and the magnetic resonance imaging unit shall be (a) located in the City of Starkville, Oktibbeha County, Mississippi; (b) operated jointly by Mississippi State University and the public or private health care provider selected by Mississippi State University through a request for proposals (RFP) process in which Mississippi State University

selects, and the Board of Trustees of State Institutions of Higher Learning approves, the health care provider that makes the best overall proposal; (c) available to Mississippi State University for research purposes two-thirds (⅔) of the time that the linear accelerator and magnetic resonance imaging unit are operational; and (d) available to the public or private health care provider selected by Mississippi State University and approved by the Board of Trustees of State Institutions of Higher Learning one-third (⅓) of the time for clinical, diagnostic and treatment purposes. For purposes of this subsection, the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived.

(17) The State Department of Health shall issue a certificate of need for the construction of an acute care hospital in Kemper County, not to exceed twenty-five (25) beds, which shall be named the "John C. Stennis Memorial Hospital." In issuing the certificate of need under this subsection, the department shall give priority to a hospital located in Lauderdale County that has two hundred fifteen (215) beds. For purposes of this subsection, the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan and the provisions of Section 41-7-197 requiring a formal certificate of need hearing process are waived. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the person or entity receiving the certificate of need authorized under this subsection or for the beds constructed under the authority of that certificate of need.

(18) The planning, design, construction, renovation, addition, furnishing and equipping of a clinical research unit at any health care facility defined in Section 41-7-173(h) that is under the direction and control of the University of Mississippi Medical Center and located in Jackson, Mississippi, and the addition of new beds or the conversion of beds from one (1) category to another in any such clinical research unit, shall not require the issuance of a certificate of need under Section 41-7-171 et seq., notwithstanding any provision in Section 41-7-171 et seq. to the contrary.

(19) [Repealed]

(20) Nothing in this section or in any other provision of Section 41-7-171 et seq. shall prevent any nursing facility from designating an appropriate number of existing beds in the facility as beds for providing care exclusively to patients with Alzheimer's disease.

HISTORY:

Laws, 1979, ch. 451, §§ 9, 27; Laws, 1980, ch. 493, § 5; Laws, 1981, ch. 484, § 14; Laws, 1982, ch. 499, § 1; Laws, 1983, ch. 484, § 5; Laws, 1984, ch. 505; Laws, 1985, ch. 534, § 8; Laws, 1986, ch. 437, § 40; Laws, 1987, ch. 515, § 6; Laws, 1988, ch. 421, § 1; Laws, 1989, ch. 530, § 2; Laws, 1990, ch. 510, § 2; Laws, 1993, ch. 426, § 10; Laws, 1993, ch. 493, § 1; Laws, 1993, ch. 609, § 10; Laws, 1994, ch. 649, § 16; Laws, 1995, ch. 599, § 1; Laws, 1996, ch. 551, § 1; Laws, 1998, ch. 596, § 1; Laws, 1999, ch. 303, § 1; Laws, 1999, ch. 495, § 2; Laws, 1999, ch. 583, § 2; Laws, 2001, ch. 342, § 1; Laws, 2001, ch. 607, § 1; Laws, 2002, ch. 636B, § 6; Laws, 2003, ch. 393, § 2; Laws, 2004, ch. 438, § 1; Laws, 2006, ch. 513, § 1; Laws, 2007, ch. 514, § 21; Laws, 2012, ch. 524, § 14; Laws, 2015, ch. 491, § 1, eff from and after passage (approved Apr. 23, 2015).

Joint Legislative Committee Note —

Section 1 of ch. 303, Laws of 1999, effective from and after passage (approved March 1, 1999), amended this section. Section 2 of ch. 495, Laws of 1999, effective July 1, 1999, also amended this section. Finally, this section was amended by Section 2 of ch. 583, Laws of 1999, effective from and after June 30, 1999. As set out above, this section reflects the language of all amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the Legislative intent at the April 28, 1999, meeting of the Committee.

Section 1 of ch. 342, Laws of 2001, effective from and after June 30, 2001, amended this section. Section 1 of ch. 607, Laws of 2001, effective from and after July 1, 2001, also amended this section. As set out above, this section reflects the language of Section 1 of ch. 607, Laws of 2001, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

In 2009, typographical errors in this section were corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by making the following substitutions: in (1)(*l*), "subsection (1) of this section" for "this Section 41-7-191(1)"; in (2)(j), (4)(a)(ii), (4)(a)(iv), (4)(a)(vi), (6) and (14), "...the provisions of Section 41-7-193(l)...are waived" for "...the provision of Section 41-7-193(l)...is waived"; in (2)(*l*), "...the provisions of Section 41-7-193(l)...are hereby waived" for "...the provision of Section 41-7-193(l)...is hereby waived"; in (2)(n), "...within eighteen (18) months after July 1, 1998" for "within eighteen months after the effective date of July 1, 1998..."; and in (2)(o), "...within eighteen (18) months after July 1, 2001" for "within eighteen months after the effective date of July 1, 2001..." The section as set out in the bound volume reflects these corrections, which were ratified by the Joint Committee at its July 22, 2010, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in the fourth sentence of (2)(p) by substituting "Section 41-7-193(1)" for "Section 43-7-193(1)." The Joint Committee ratified the correction at its August 1, 2013, meeting.

Editor's Notes —

Laws of 1995, ch. 599, § 2, provides as follows:

"SECTION 2. All new programs authorized in Section 1 of this act are subject to the availability of funds specifically appropriated therefor by the Legislature."

Laws of 2002, ch. 636B, was Senate Bill 2189, 2002 Regular Session, and originally passed the House of Representatives and the Senate on April 2, 2002. The Governor vetoed Senate Bill 2189 on April 9, 2002. The veto was overridden by both the House of Representatives and the Senate on April 12, 2002.

Laws of 2007, ch. 514, § 22 provides as follows:

"SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act." Laws of 2007, ch. 514 was approved on March 30, 2007.

A former subsection (13), which provided that new construction of nursing facilities or nursing facility beds or the conversion of other beds to nursing facility beds did not require the issuance of a certificate of need under certain circumstances, was repealed by its own terms effective July 1, 2005.

Subsection (19), which authorized the State Department of Health to approve a change of ownership of a part of a health care facility, was repealed by its own terms effective June 30, 2016.

Cross References —

Mississippi State Veterans Home, see § 35-1-19 et seq.

Notwithstanding the provisions of subsection (11) of this section, Department of Mental Health authorized to contract with private or public entities to transfer beds to other entities to better meet needs of clients, see § 41-4-18.

Ellisville State School, see §§ 41-7-73, 41-19-103 through 41-19-121.

Definition of "capital expenditure" for purposes of §§ 41-7-171 et seq., see § 41-7-173.

Power of health care commission to conduct hearings in addition to those authorized by this section, see § 41-7-185.

Projects which are deemed nonsubstantive for purposes of review by the Department, see § 41-7-205.

Critical access hospitals authorized to bank licensed hospital acute care beds, see § 41-9-210.

Federal Aspects—

Provisions of Title XVIII of Social Security Act, see 42 USCS §§ 1395 et seq.

Provisions of Title XIX of Social Security Act, see 42 USCS §§ 1396 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Addition of beds.
3. Certificate of need granted.
4. Revocation.

1. In general.

Mississippi Supreme Court finds no ambiguity in the language of Miss. Code Ann. § 41-7-191(16), as without listing a single exception or qualification, it clearly mandates the Mississippi State Department of Health to issue a certificate of need; therefore, it was proper to grant an application that was filed by the parties delineated in § 41-7-191(16). Oktibbeha County Hosp. v. Miss. State Dep't of Health, 956 So. 2d 207, 2007 Miss. LEXIS 277 (Miss. 2007).

Upon passing Miss. Code Ann. § 41-7-191(16), the Mississippi legislature effectively waived all certificate of need (CON) requirements as they relate to any endeavor entered into between Mississippi State University and any public or private health care provider in the acquisition of a linear accelerator and a magnetic resonance imaging unit; therefore, a hospital challenging the decision to grant a CON to the parties delineated in § 41-7-191 did not need a hearing. Oktibbeha County Hosp. v. Miss. State Dep't of Health, 956 So. 2d 207, 2007 Miss. LEXIS 277 (Miss. 2007).

Supposed "notice" to a special assistant attorney general is not sufficient under Miss. R. Civ. P. 24(d) or Miss. R. App. P. 44; therefore, a hospital was procedurally barred from bringing constitutional challenges to Miss. Code Ann. § 41-7-191(16) under Miss. Const. art. 4, § 87, Miss. Const. art. 3, § 14, and the Fourteenth Amendment where there was no notice to the Mississippi Attorney General. Oktibbeha County Hosp. v. Miss. State Dep't of Health, 956 So. 2d 207, 2007 Miss. LEXIS 277 (Miss. 2007).

An existing nursing home was eligible for a a certificate of need for additional beds notwithstanding that it had already been issued a certificate of need for 60 beds, only 30 of which were to be Medicaid-eligible, as the statutory provision which allowed the original certificate of need did not prohibit the issuance of a later certificate of need for additional beds; further, the certificate of need was properly granted to the existing nursing home as such grant was more cost-effective, based in large part upon the fact that it involved an addition to an existing facility as opposed to the construction of a new facility. Cain v. Mississippi State Dep't of Health, 767 So. 2d 207, 2000 Miss. LEXIS 213 (Miss. 2000).

There is nothing in statute or case law which indicates that a lessened standard of need applies to determine if a "relocation" should be approved. St. Dominic-Jackson Mem'l Hosp. v. Mississippi State Dep't of Health, 728 So. 2d 81, 1998 Miss. LEXIS 505 (Miss. 1998).

Municipal hospital was entitled to state action immunity from federal antitrust claim arising from its exclusive contract with medical supervisor, who performed chronic dialysis in its facility for end stage renal disease, as (1) it was subdivision of municipal corporation under §§ 41-13-10 et seq., it was required to obtain certificate of need under § 41-7-191(1)(a) and (b), and it had right under § 41-13-35(5)(g) to contract with any person to provide services, and (2) purpose of its contract to supervise special unit and perform critical functions was to obtain physician's dedicated services by displacing unfettered professional medical freedom, and allegedly anticompetitive results were thus foreseeable. Martin v. Memorial Hosp., 86 F.3d 1391, 1996 U.S. App. LEXIS 16695 (5th Cir. Miss. 1996).

Decision of Mississippi State Department of Health to disapprove unsuccessful applicant's application for certificate of need for construction of 60-bed nursing home and to approve competing application was supported by substantial evidence and was neither arbitrary nor capricious, despite contention that unsuccessful application reflected lower expenditures and costs; by state law, Department could grant only one of competing applications in county, and State Health Officer conducted comparative analysis of both applications and determined successful application to be superior. Cain v. Mississippi State Dep't of Health, 666 So. 2d 506, 1995 Miss. LEXIS 621 (Miss. 1995).

Nothing in § 41-7-191 prohibits a provider domiciled in one county from applying for a receiving a certificate of need to offer a health care service in another county. Durant v. Humphreys County Memorial Hospital/Extended Care Facility, 587 So. 2d 244, 1991 Miss. LEXIS 672 (Miss. 1991).

2. Addition of beds.

When hospital system's proposal to relocate 60 beds from one hospital to another was actually a request to add 60 beds, a certificate of need should not have been granted because the hospital system admitted that it could not meet the criterion that should have been applied, which pertained to the addition of beds. Singing River Hosp. Sys. v. Biloxi Reg'l Med. Ctr., 928 So. 2d 810, 2006 Miss. LEXIS 121 (Miss. 2006).

3. Certificate of need granted.

Substantial evidence supported the decision of the Mississippi State Department of Health (DOH) to grant a certificate of need allowing the relocation of a closed hospital because the record showed DOH considered each of a competitor's objections to the application and permissibly chose which conflicting evidence to credit. Singing River Health Sys. v. Miss. State Dep't of Health, 172 So. 3d 1190, 2014 Miss. App. LEXIS 658 (Miss. Ct. App. 2014), cert. denied, — So. 3d —, 2015 Miss. LEXIS 400 (Miss. 2015).

When granting a hospital's application for a certificate of need, the Mississippi State Department of Health did not improperly treat the application as one seeking the relocation of an existing facility because (1) the hospital sought to relocate an existing hospital that had been closed for less than 60 months, and (2) the hospital did not propose to maintain a presence at the site of the closed facility. Singing River Health Sys. v. Miss. State Dep't of Health, 172 So. 3d 1190, 2014 Miss. App. LEXIS 658 (Miss. Ct. App. 2014), cert. denied, — So. 3d —, 2015 Miss. LEXIS 400 (Miss. 2015).

Mississippi Department of Health (DOH) properly approved a certificate of need (CON) for a behavioral health center to add twenty adolescent psychiatric beds in Warren County, pursuant to Miss. Code Ann. § 41-7-191(4)(a)(iii), because a previously approved CON for such beds was never acted upon and, therefore, the exception to the moratorium on adolescent psychiatric beds under § 41-7-191(4)(a)(iii) remained available to the DOH; the DOH's interpretation of § 41-7-191(4)(a)(iii) was reasonable. Diamond Grove Ctr., LLC v. Miss. State Dep't of Health, 98 So. 3d 1068, 2012 Miss. LEXIS 506 (Miss. 2012).

Mississippi State Department of Health (MSDH) did not err in granting a certificate of need (CON) to a company for the provision of mobile magnetic resonance imaging (MRI) services because, even though a customer terminated its service agreement with the MRI company while the CON application was pending, substantial evidence supported the MSDH's determination that the MRI company would still be able to perform enough procedures for its remaining customers to meet the annual requirements of the state health plan. Miss. State Dep't of Health v. Baptist Mem. Hospital-DeSoto, Inc., 984 So. 2d 967, 2008 Miss. LEXIS 323 (Miss. 2008).

4. Revocation.

Language in the statutes that establish certificates of need (CONs), Miss. Code Ann. § 41-7-191 and Miss. Code Ann. § 41-7-195, indicates that the Mississippi Legislature does not intend for the CONs to exist in perpetuity; instead, the CONs have a specific legislatively-enacted expiration date. Therefore, there was no error when a trial court affirmed a decision from the Mississippi State Department of Health regarding the revocation of two legislatively-established CONs. Brentwood Health Mgmt. of Miss., LLC v. Miss. State Dep't of Health, 29 So. 3d 775, 2009 Miss. App. LEXIS 261 (Miss. Ct. App. 2009).

OPINIONS OF THE ATTORNEY GENERAL

Offices of private physicians and dentists in which ambulatory surgical services are provided are not health care facilities and are therefore not subject to certificate of need review. 1994 Miss. Op. Att'y Gen. 924.

An office that is a large, all encompassing, multi-speciality ambulatory surgical facility, is not a private office as intended by the Section 41-7-173. Moreover, a facility is a health care facility inasmuch as it would provide institutional health services. Accordingly, such a facility would not be exempt from the certificate of need requirements set forth in section 41-7-191(1)(d)(xi), despite the fact that it is owned by a physicians' group. 1996 Miss. Op. Att'y Gen. 802.

The establishment of and certification of a peritoneal dialysis facility for Medicare purposes by the Mississippi State Department of Health is the establishment of a health care facility and, as such, requires a certificate of need under the Certificate of Need Law of 1979. 1999 Miss. Op. Att'y Gen. 808.

The establishment of a Distinct Part, PPS-excluded acute rehabilitation unit in an existing hospital, without the addition of any licensed beds and when the beds at issue will remain licensed as acute care beds and only the Medicare reimbursement schedule will change, is a project that requires certificate of need review and approval if the unit is either (1) a new health care facility, or (2) proposes to offer a new health service which was not previously offered by the hospital. 1999 Miss. Op. Att'y Gen. 309.

Subsection (2)(q)(vi) is properly interpreted by the Department of Health to be essentially a "tie-breaker" between two equally qualified applications. 2002 Miss. Op. Att'y Gen. 302.

The 2004 amendment to 41-7-191(16) is

clearly a mandate to the department of health to grant the necessary certification of need (CON), without requiring the applicant to demonstrate compliance with any CON criteria or specifications. 2005 Miss. Op. Att'y Gen. 452.

The 2006 amendment of Section 41-7-191 plainly requires a certificate of need for the reopening of any health care facility after it has been closed for more than 60 months. 2006 Miss. Op. Att'y Gen. 261.

Since the legislature did not define the term, it is within the Department of Health's discretion and authority to determine and set by regulation what constitutes the "reopening" and "operation" of a health care facility for purposes of Section 41-7-191 – whether it means actually housing patients/residents, or something short of this. 2006 Miss. Op. Att'y Gen. 261.

Vendors who, in good faith, provided goods or services, in situations when through no fault of the vendor, the governing authorities made an error in the manner the purchasing laws were followed, are authorized by Section 31-7-57 to bring an original cause of action, as the claim is based on a contractual obligation. It would not be appropriately handled as an appeal pursuant to Section 21-39-11. 2006 Miss. Op. Att'y Gen. 267.

§ 41-7-193. Certificate of need; new institutional health services and other projects.

(1) No person may enter into any financing arrangement or commitment for financing a new institutional health service or any other project requiring a certificate of need unless such certificate has been granted for such purpose. A certificate of need shall not be granted or issued to any person for any proposal, cause or reason, unless the proposal has been reviewed for consistency with the specifications and the criteria established by the State Department of Health and substantially complies with the projection of need as reported in the state health plan in effect at the time the application for the proposal was submitted.

(2) An application for a certificate of need for an institutional health service, medical equipment or any proposal requiring a certificate of need shall specify the time, within that granted, such shall be functional or operational according to a time schedule submitted with the application. Each certificate of need shall specify the maximum amount of capital expenditure that may be obligated. The State Department of Health shall periodically review the progress and time schedule of any person issued or granted a certificate of need for any purpose.

(3) An application for a certificate of need may be filed at any time with the department after the applicant has given the department fifteen (15) days' written notice of its intent to apply for a certificate of need. The department shall not delay review of an application. The department shall make its recommendation approving or disapproving a complete application within forty-five (45) days of the date the application was filed or within fifteen (15) days of receipt of any requested information, whichever is later, said request to be made by the department within fifteen (15) days of the filing of the application.

HISTORY:

Laws, 1979, ch. 451, § 12; Laws, 1980, ch. 493, § 6; Laws, 1982, ch. 482, § 3; Laws, 1983, ch. 484, § 6; Laws, 1985, ch. 534, § 9; Laws, 1986, ch. 437, § 41; Laws, 1993, ch. 467, § 1; Laws, 2016, ch. 412, § 2, eff from and after July 1, 2016.

Editor's Notes —

Laws of 1986, ch. 437, § 51, eff from and after July 1, 1986, amended Laws of 1985, ch. 534, § 15, by deleting the provision which would have repealed this section as of July 1, 1986.

Cross References —

Waiver of provisions of this section for purposes of certificate of need for certain facilities in certain counties, see § 41-7-191.

Provisions of subsection (1) of this section waived for the purposes of 41-7-191(2)(u), see § 41-7-191.

JUDICIAL DECISIONS

1. In general.

Supreme Court found substantial evidence that appellee's application for a certificate of need to perform percutaneous coronary interventions at its hospitals substantially complied with the State Health Plan as required by Miss. Code Ann. § 41-7-193(1) and was consistent with its requirements. Appellant, which contested the application, failed to show the State Department of Health's decision that appellee substantially complied with the State Health Plan was not based on substantial evidence. Baptist Mem. Hospital-Desoto, Inc. v. Miss. State Dep't of Health, 214 So. 3d 277, 2017 Miss. LEXIS 118 (Miss. 2017).

Judgment awarding a company a certificate of need allowing it to relocate nursing home beds was reversed because the Mississippi State Department of Health did not act arbitrarily or capriciously, outside of its authority, or violate any vested constitutional rights in denying the certificate of need as pursuant to Miss. Code Ann. § 41-7-193(1), there was substantial evidence in the record to support the finding that the relocation project was not consistent with the State Health Plan and under Miss. Code Ann. § 41-7-201(2)(f), there was substantial evidence showing that the relocation of the nursing home beds would have a significant adverse affect on the ability of an existing facility or service to provide indigent care. State Dep't of Health v. Mid-South Assocs., LLC, 25 So. 3d 358, 2009 Miss. App. LEXIS 205 (Miss. Ct. App. 2009), cert. denied, 24 So. 3d 1038, 2010 Miss. LEXIS 20 (Miss. 2010).

Mississippi State Department of Health did not err when it granted a certificate of need to provide magnetic resonance services to an applicant where the evidence showed that the projected unit would have provided for a minimum number of procedures per year based on information in a state health plan, pursuant to Miss. Code Ann. § 41-7-193(1). Open MRI, LLC v. Miss. State Dep't of Health, 939 So. 2d 813, 2006 Miss. App. LEXIS 737 (Miss. Ct. App. 2006).

In its determination of a Certificate of Need, the proposal had to be consistent with the specifications and criteria established by the Department of Health and in substantial compliance with the Mississippi State Health Plan. Jeff Anderson Reg'l Med. Ctr. v. Miss. State Dep't of Health, 798 So. 2d 1264, 2001 Miss. LEXIS 289 (Miss. 2001).

A showing of substantial evidence of need is required in order for an applicant to secure a certificate of need for any health care proposal to which the certificate of need laws apply; what defines need in any given case depends upon the purpose behind the enactment of the certificate of need laws, particular statutory provisions, and a consideration of the Department of Health's stated general review criteria. Mississippi State Dep't of Health v. Mississippi Baptist Medical Ctr., 663 So. 2d 563, 1995 Miss. LEXIS 535 (Miss. 1995).

The Mississippi State Health Department's use of market share analysis to determine a healthcare provider's population base in reviewing an application for a certificate of need to establish a cardiac catheterization service was not arbitrary or capricious; the market share analysis is merely statistical method used to evaluate the need for a particular service, and it enables the Mississippi State Department of Health to determine what portion of the service area's population the applicant is likely to serve. Mississippi State Dep't of Health v. Golden Triangle Regional Medical Center, 603 So. 2d 854 (Miss. 1992).

The Mississippi State Health Department's use of market share analysis to determine population base in reviewing certificate of need applications is not arbitrary or capricious. HTI Health Services, Inc. v. Mississippi State Dep't of Health, 603 So. 2d 848, 1992 Miss. LEXIS 361 (Miss. 1992).

§ 41-7-195. Certificate of need; validity; transferability; duration; revocation.

(1) A certificate of need shall be valid only for the defined scope, physical location and person named in the application. A certificate of need shall not be

transferable or assignable nor shall a project or capital expenditure project be transferred from one person to another, except with the approval of the State Department of Health. A certificate of need shall be valid for the period of time specified therein.

(2) A certificate of need shall be issued for a period of twelve (12) months, or such other lesser period as specified by the State Department of Health.

(3) The State Department of Health may define by regulation, not to exceed six (6) months, the time for which a certificate of need may be extended.

(4) If commencement of construction or other preparation is not substantially undertaken during a valid certificate of need period or the State Department of Health determines the applicant is not making a good faith effort to obligate such approved expenditure, the State Department of Health shall have the right to withdraw, revoke or rescind the certificate.

(5) The State Department of Health may approve or disapprove a proposal for a certificate of need as originally presented in final form, or it may approve a certificate of need by a modification, by reduction only, of such proposal provided the proponent agrees to such modification.

HISTORY:

Laws, 1979, ch. 451, § 13; Laws, 1980, ch. 493, § 7; Laws, 1982, ch. 482, § 4; Laws, 1986, ch. 437, § 42, eff from and after July 1, 1986.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Time period.
3. Revocation.
4. Hearing officer.

1. In general.

Nothing in Miss. Code Ann. 41-7-195(4) indicates that the Mississippi Legislature intends to limit the Mississippi State Department of Health's certificate of need (CON) revocation power to only those CONs that are not authorized by statute. Brentwood Health Mgmt. of Miss., LLC v. Miss. State Dep't of Health, 29 So. 3d 775, 2009 Miss. App. LEXIS 261 (Miss. Ct. App. 2009).

2. Time period.

Pursuant to the plain language of Miss. Code Ann. § 41-7-195, the Mississippi State Department of Health did not have the authority to grant an applicant an extension of its Certificate of Need (CON) after the CON had expired, nor the authority to promulgate a rule allowing holders of expired CONS the right to request an extension of their CONs. Dialysis Solution, LLC v. Miss. State Dep't of Health, 31 So. 3d 1204, 2010 Miss. LEXIS 81 (Miss. 2010).

Language in the statutes that establish certificates of need (CONs), Miss. Code Ann. § 41-7-191 and Miss. Code Ann. § 41-7-195, indicates that the Mississippi Legislature does not intend for the CONs to exist in perpetuity; instead, the CONs have a specific legislatively-enacted expiration date. Therefore, there was no error when a trial court affirmed a decision from the Mississippi State Department of Health regarding the revocation of two legislatively-established CONs. Brentwood Health Mgmt. of Miss., LLC v. Miss. State Dep't of Health, 29 So. 3d 775, 2009 Miss. App. LEXIS 261 (Miss. Ct. App. 2009).

3. Revocation.

Revocation of two certificates of need (CONs) for a hospital was not arbitrary and capricious because a hospital did not do anything that qualified as the commencement of construction or a good faith effort to obligate an approved expenditure; very little money had been spent in furtherance of a project, and the evidence showed that the hospital focused its efforts into the relocation of the project, rather than completion of the project contemplated by the CONs. Brentwood Health Mgmt. of Miss., LLC v. Miss. State Dep't of Health, 29 So. 3d 775, 2009 Miss. App. LEXIS 261 (Miss. Ct. App. 2009).

4. Hearing officer.

In a case involving the revocation of two certificates of need (CONs), although a hearing officer made an improper reference about giving deference to the Mississippi State Department of Health, there was no reversible error because it was clear that the hearing officer acted according to her mandate to make recommended findings of fact and conclusions of law to a state health officer. Brentwood Health Mgmt. of Miss., LLC v. Miss. State Dep't of Health, 29 So. 3d 775, 2009 Miss. App. LEXIS 261 (Miss. Ct. App. 2009).

§ 41-7-197. Certificate of need; hearing before hearing officer; review.

(1) The State Department of Health shall adopt and utilize procedures for conducting certificate of need reviews. Such procedures shall include, inter alia, the following: (a) written notification to the applicant; (b) written notification to health care facilities in the same health service area as the proposed service; (c) written notification to other persons who prior to the receipt of the application have filed a formal notice of intent to provide the proposed services in the same service area; and (d) notification to members of the public who reside in the service area where the service is proposed, which may be provided through newspapers or public information channels.

(2) All notices provided shall include, inter alia, the following: (a) the proposed schedule for the review; (b) written notification of the period within which a public hearing during the course of the review may be requested in writing by one or more affected persons, such request to be made within ten (10) days of the department's staff recommendation for approval or disapproval of an application; and (c) the manner in which notification will be provided of the time and place of any hearing so requested. Any such hearing shall be commenced by an independent hearing officer designated by the State Department of Health within sixty (60) days of the filing of the hearing request unless all parties to the hearing agree to extend the time for the commencement of the hearing. At such hearing, the hearing officer and any person affected by the proposal being reviewed may conduct reasonable questioning of persons who make relevant factual allegations concerning the proposal. The hearing officer shall require that all persons be sworn before they may offer any testimony at the hearing, and the hearing officer is authorized to administer oaths. Any person so choosing may be represented by counsel at the hearing. A record of the hearing shall be made, which shall consist of a transcript of all testimony received, all documents and other material introduced by any interested person, the staff report and recommendation and such other material as the hearing officer considers relevant, including his own recommendation, which he shall make, after reviewing, studying and analyzing the evidence presented during the hearing, within a reasonable period of time after the hearing is closed, which in no event shall exceed forty-five (45) days. The completed record shall be certified to the State Health Officer, who shall consider only the record in making his decision, and shall not consider any evidence or material which is not included therein. All final decisions regarding the issuance of a certificate of need shall be made by the State Health Officer. The State Health Officer shall make his or her written findings and issue his or her order after reviewing said record. The findings and decision of the State Health Officer shall not be deferred to any later date.

(3) Unless a hearing is held, if review by the State Department of Health concerning the issuance of a certificate of need is not complete with a final

decision issued by the State Health Officer within the time specified by rule or regulation, which shall not exceed ninety (90) days from the filing of the application for a certificate of need, the proponent of the proposal may, within thirty (30) days after the expiration of the specified time for review, commence such legal action as is necessary, in the Chancery Court of the First Judicial District of Hinds County or in the chancery court of the county in which the service or facility is proposed to be provided, to compel the State Health Officer to issue written findings and written order approving or disapproving the proposal in question.

HISTORY:

Laws, 1979, ch. 451, § 14; Laws, 1980, ch. 493, § 8; Laws, 1982, ch. 482, § 5; Laws, 1983, ch. 484, § 7; Laws, 1984, ch. 492, § 2; Laws, 1985, ch. 534, § 10; Laws, 1986, ch. 437, § 43; Laws, 1988, ch. 421, § 2; Laws, 1993, ch. 467, § 2; Laws, 2016, ch. 412, § 3, eff from and after July 1, 2016.

Editor's Notes —

Laws of 1982, ch. 482, § 8, as amended by Laws of 1983, ch. 484, § 10, as amended by Laws of 1986, ch. 437, § 49, as amended by Laws of 1986, ch. 500, § 32, provides as follows:

"SECTION 8. In the event Part 123 of Title 42 of the Code of Federal Regulations (CFR) which pertains to the United States Public Service Act is amended so as to permit states to impose fees or assess costs to those defined persons, permitted to and requesting hearings during the course of a review as provided for in Section 41-7-197(1), the commission, or its successor, may, by its rulemaking authority, impose or assess such fees and/or costs as determined to be reasonable by the Secretary upon such persons requesting the herein stated hearings, payable to the commission, or its successor, prior to any such hearing. Such charges, fees and/or costs must be applicable to all persons requesting these hearings and uniform in all cases."

Cross References —

Conduct of hearings other than those provided for in this section by the State Department of Health in carrying out its functions under the Health Care Certificate of Need Law of 1979, see § 41-7-185.

Waiver of provisions of this section for purposes of certificate of need for construction of the John C. Stennis Memorial Hospital, see § 41-7-191.

Provisions of this section waived for the purposes of 41-7-191(2)(u), see § 41-7-191.

Federal Aspects—

Provisions of the United States Public [Health] Service Act, see 42 USCS §§ 201 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Due process.
3. Attorney General opinion.

1. In general.

Mississippi State Department of Health properly allowed an applicant to submit additional information for a certificate of need since it extended the application to the next review period, and the objectors' right to a public hearing under Miss. Code Ann. § 41-7-197(2) was satisfied; even if the Department did not extend the period after subsequent information was given, this was not important since an applicant established the requirements for the certificate of need with the information that had already been received. Open MRI, LLC v. Miss. State Dep't of Health, 939 So. 2d 813, 2006 Miss. App. LEXIS 737 (Miss. Ct. App. 2006).

The Mississippi State Health Department's use of market share analysis to determine a healthcare provider's population base in reviewing an application for a certificate of need to establish a cardiac catheterization service was not arbitrary or capricious; the market share analysis is merely statistical method used to evaluate the need for a particular service, and it enables the Mississippi State Department of Health to determine what portion of the service area's population the applicant is likely to serve. Mississippi State Dep't of Health v. Golden Triangle Regional Medical Center, 603 So. 2d 854 (Miss. 1992).

The Mississippi State Health Department's use of market share analysis to determine population base in reviewing certificate of need applications is not arbitrary or capricious. HTI

Health Services, Inc. v. Mississippi State Dep't of Health, 603 So. 2d 848, 1992 Miss. LEXIS 361 (Miss. 1992).

Section 41-7-197(1) does not mandate actual written notice to "affected persons," only that the Department of Health should adopt procedures for such notice. Durant v. Humphreys County Memorial Hospital/Extended Care Facility, 587 So. 2d 244, 1991 Miss. LEXIS 672 (Miss. 1991).

2. Due process.

In a case involving a certificate of need, procedural due process rights were not violated where all of the steps under Miss. Code Ann. § 41-7-197 were followed; no parties to the proceeding, no health care facilities in the same health care service area, and no others originally noticed, appeared to request a new hearing. The issue of import to satisfy the requirements of the Mississippi State Health Plan was not the specific route, but rather the number of procedures, and notice of a new route was given. Miss. State Dep't of Health v. Baptist Mem. Hospital-DeSoto, Inc., 984 So. 2d 967, 2008 Miss. LEXIS 323 (Miss. 2008).

3. Attorney General opinion.

In a case involving the revocation of two certificates of need (CONs), a hospital was not prejudiced by an opinion from an attorney general because the decision to revoke was based on the conclusion that the hospital had not substantially undertaken to complete the two CONs at issue and that there had been no good faith effort to complete the projects contemplated by the CONs. Brentwood Health Mgmt. of Miss., LLC v. Miss. State Dep't of Health, 29 So. 3d 775, 2009 Miss. App. LEXIS 261 (Miss. Ct. App. 2009).

OPINIONS OF THE ATTORNEY GENERAL

The duties of the State Health Officer in making decisions regarding certificates of need are mandatory. No provision can be found for the State Health Officer to recuse himself from those duties or to delegate them to some other person. 2004 Miss. Op. Att'y Gen. 638.

§ 41-7-199. Repealed.

Repealed by Laws, 1983, ch. 484, § 11, eff from and after April 9, 1983.

[Laws, 1979, ch. 451, § 15; Laws, 1980, ch. 493, § 9; Laws, 1982, ch. 482, § 6]

Editor's Notes —

Former § 41-7-199 provided for administrative appeal of any written order concerning issuance of certificate of need.

§ 41-7-201. Appeal of final order pertaining to certificate of need for home health agency or health care facility.

(1) The provisions of this subsection (1) shall apply to any party appealing any final order of the State Department of Health pertaining to a certificate of need for a home health agency, as defined in Section 41-7-173(h)(ix):

(a) In addition to other remedies now available at law or in equity, any party aggrieved by any such final order of the State Department of Health shall have the right of appeal to the Chancery Court of the First Judicial District of Hinds County, Mississippi, which appeal must be filed within thirty (30) days after the date of the final order. Provided, however, that any appeal of an order disapproving an application for such a certificate of need may be made to the chancery court of the county where the proposed construction, expansion or alteration was to be located or the new service or purpose of the capital expenditure was to be located. Such appeal must be filed in accordance with the thirty (30) days for filing as heretofore provided. Any appeal shall state briefly the nature of the proceedings before the State Department of Health and shall specify the order complained of. Any appeal shall state briefly the nature of the proceedings before the State Department of Health and shall specify the order complained of. Any person whose rights may be materially affected by the action of the State Department of Health may appear and become a party or the court may, upon motion, order that any such person, organization or entity be joined as a necessary party.

(b) Upon the filing of such an appeal, the clerk of the chancery court shall serve notice thereof upon the State Department of Health, whereupon the State Department of Health shall, within thirty (30) days or within such additional time as the court may by order for cause allow from the service of such notice, certify to the chancery court the record in the case, which records shall include a transcript of all testimony, together with all exhibits or copies thereof, all pleadings, proceedings, orders, findings and opinions entered in the case; provided, however, that the parties and the State Department of Health may stipulate that a specified portion only of the record shall be certified to the court as the record on appeal.

(c) The court may dispose of the appeal in termtime or vacation and may sustain or dismiss the appeal, modify or vacate the order complained of, in whole or in part, as the case may be; but in case the order is wholly or partly vacated, the court may also, in its discretion, remand the matter to the State Department of Health for such further proceedings, not inconsistent with the court's order, as, in the opinion of the court, justice may require. The order shall not be vacated or set aside, either in whole or in part, except for errors of law, unless the court finds that the order of the State Department of Health is not supported by substantial evidence, is contrary to the manifest weight of the evidence, is in excess of the statutory authority or jurisdiction of the State Department of Health, or violates any vested constitutional rights of any party involved in the appeal. Provided, however, an order of the chancery court reversing the denial of a certificate of need by the State Department of Health shall not entitle the applicant to effectuate the certificate of need until either:

(i) Such order of the chancery court has become final and has not been appealed to the Supreme Court; or

(ii) The Supreme Court has entered a final order affirming the chancery court.

(d) Appeals in accordance with law may be had to the Supreme Court of the State of Mississippi from any final judgment of the chancery court.

(2) The provisions of this subsection (2) shall apply to any party appealing any final order of the State Department of Health pertaining to a certificate of need for any health care facility as defined in Section 41-7-173(h), with the exception of any home health agency as defined in Section 41-7-173(h)(ix):

(a) There shall be a "stay of proceedings" of any final order issued by the State Department of Health pertaining to the issuance of a certificate of need for the establishment, construction, expansion or replacement of a health care facility for a period of thirty (30) days from the date of the order, if an existing provider located in the same service area where the health care facility is or will be located has requested a hearing during the course of review in opposition to the issuance of the certificate of need. The stay of proceedings shall expire at the termination of thirty (30) days; however, no construction, renovation or other capital expenditure that is the subject of the order shall be undertaken, no license to operate any facility that is the subject of the order shall be issued by the licensing agency, and no certification to participate in the Title XVII or Title XIX programs of the Social Security Act shall be granted, until all statutory appeals have been exhausted or the time for such appeals has expired. Notwithstanding the foregoing, the filing of an appeal from a final order of the State Department of Health or the chancery court for the issuance of a certificate of need shall not prevent the purchase of medical equipment or development or offering of institutional health services granted in a certificate of need issued by the State Department of Health.

(b) In addition to other remedies now available at law or in equity, any party aggrieved by such final order of the State Department of Health shall have the right of appeal to the Chancery Court of the First Judicial District of Hinds County, Mississippi, which appeal must be filed within twenty (20) days after the date of the final order. Provided, however, that any appeal of an order disapproving an application for such a certificate of need may be made to the chancery court of the county where the proposed construction, expansion or alteration was to be located or the new service or purpose of the capital expenditure was to be located. Such appeal must be filed in accordance with the twenty (20) days for filing as heretofore provided. Any appeal shall state briefly the nature of the proceedings before the State Department of Health and shall specify the order complained of.

(c) Upon the filing of such an appeal, the clerk of the chancery court shall serve notice thereof upon the State Department of Health, whereupon the State Department of Health shall, within thirty (30) days of the date of the filing of the appeal, certify to the chancery court the record in the case, which records shall include a transcript of all testimony, together with all exhibits or copies thereof, all proceedings, orders, findings and opinions entered in the case; provided, however, that the parties and the State Department of Health may stipulate that a specified portion only of the record shall be certified to the court as the record on appeal. The chancery court shall give preference to any such appeal from a final order by the State Department of Health in a certificate of need proceeding, and shall render a final order regarding such appeal no later than one hundred twenty (120) days from the date of the final order by the State Department of Health. If the chancery court has not rendered a final order within this one-hundred-twenty-day period, then the final order of the State Department of Health shall be deemed to have been affirmed by the chancery court, and any party to the appeal shall have the right to appeal from the chancery court to the Supreme Court on the record certified by the State Department of Health as otherwise provided in paragraph (g) of this subsection. In the event the chancery court has not rendered a final order within the one-hundred-twenty-day period and an appeal is made to the Supreme Court as provided herein, the Supreme Court shall remand the case to the chancery court to make an award of costs, fees, reasonable expenses and attorney's fees incurred in favor of appellee payable by the appellant(s) should the Supreme Court affirm the order of the State Department of Health.

(d) Any appeal of a final order by the State Department of Health in a certificate of need proceeding shall require the giving of a bond by the appellant(s) sufficient to secure the appellee against the loss of costs, fees, expenses and attorney's fees incurred in defense of the appeal, approved by the chancery court within five (5) days of the date of filing the appeal.

(e) No new or additional evidence shall be introduced in the chancery court but the case shall be determined upon the record certified to the court.

(f) The court may dispose of the appeal in termtime or vacation and may sustain or dismiss the appeal, modify or vacate the order complained of in whole or in part and may make an award of costs, fees, expenses and attorney's fees, as the case may be; but in case the order is wholly or partly vacated, the court may also, in its discretion, remand the matter to the State Department of Health for such further proceedings, not inconsistent with the court's order, as, in the opinion of the court, justice may require. The court, as part of the final order, shall make an award of costs, fees, reasonable expenses and attorney's fees incurred in favor of appellee payable by the appellant(s) should the court affirm the order of the State Department of Health. The order shall not be vacated or set aside, either in whole or in part, except for errors of law, unless the court finds that the order of the State Department of Health is not supported by substantial evidence, is contrary to the manifest weight of the evidence, is in excess of the statutory authority or jurisdiction of the State Department of Health, or violates any vested constitutional rights of any party involved in the appeal. Provided, however, an order of the chancery court reversing the denial of a certificate of need by the State Department of Health shall not entitle the applicant to effectuate the certificate of need until either:

(i) Such order of the chancery court has become final and has not been appealed to the Supreme Court; or

(ii) The Supreme Court has entered a final order affirming the chancery court.

(g) Appeals in accordance with law may be had to the Supreme Court of the State of Mississippi from any final judgment of the chancery court.

(h) Within thirty (30) days from the date of a final order by the Supreme Court or a final order of the chancery court not appealed to the Supreme Court that modifies or wholly or partly vacates the final order of the State Department of Health granting a certificate of need, the State Department of Health shall issue another order in conformity with the final order of the Supreme Court, or the final order of the chancery court not appealed to the Supreme Court.

HISTORY:

Laws, 1979, ch. 451, § 16; Laws, 1983, ch. 484, § 8; Laws, 1985, ch. 534, § 11; Laws, 1986, ch. 437, § 44; Laws, 1992, ch. 512 § 1; Laws, 1999, ch. 583, § 3; Laws, 2011, ch. 540, § 1; Laws, 2016, ch. 412, § 4, eff from and after July 1, 2016.

Editor's Notes —

Laws of 1986, ch. 437, § 51, eff from and after July 1, 1986, amended Laws of 1985, ch. 534, § 15, by deleting the provision which would have repealed this section as of July 1, 1986.

This section, as amended by Section 1 of Chapter 540, Laws of 2011, effective from and after July 1, 2011, was held unconstitutional by the Mississippi Supreme Court in *Dialysis Solutions, LLC v. Miss. State Dep't of Health*, 96 So. 3d 713 (Miss. 2012). The section as amended in 2011 is published here as there has been no legislative action taken to change the law since the court's decision. The text of the section in effect prior to the 2011 amendment is quoted below:

"(1) The provisions of this subsection (1) shall apply to any party appealing any final order of the State Department of Health pertaining to a certificate of need for a home health agency, as defined in Section 41-7-173(h)(ix):

"(a) In addition to other remedies now available at law or in equity, any party aggrieved by any such final order of the State Department of Health shall have the right of appeal to the Chancery Court of the First Judicial District of Hinds County, Mississippi, which appeal must be filed within thirty (30) days after the date of the final order. Provided, however, that any appeal of an order disapproving an application for such a certificate of need may be made to the chancery court of the county where the proposed construction, expansion or alteration was to be located or the new service or purpose of the capital expenditure was to be located. Such appeal must be filed in accordance with the thirty (30) days for filing as heretofore provided. Any appeal shall state briefly the nature of the proceedings before the State Department of Health and shall specify the order complained of. Any person whose rights may be materially affected by the action of the State Department of Health may appear and become a party or the court may, upon motion, order that any such person, organization or entity be joined as a necessary party.

"(b) Upon the filing of such an appeal, the clerk of the chancery court shall serve notice thereof upon the State Department of Health, whereupon the State Department of Health shall, within fifty (50) days or within such additional time as the court may by order for cause allow from the service of such notice, certify to the chancery court the record in the case, which records shall include a transcript of all testimony, together with all exhibits or copies thereof, all pleadings, proceedings, orders, findings and opinions entered in the case; provided, however, that the parties and the State Department of Health may stipulate that a specified portion only of the record shall be certified to the court as the record on appeal.

"(c) No new or additional evidence shall be introduced in the chancery court but the case shall be determined upon the record certified to the court.

"(d) The court may dispose of the appeal in termtime or vacation and may sustain or dismiss the appeal, modify or vacate the order complained of in whole or in part as the case may be; but in case the order is wholly or partly vacated, the court may also, in its discretion, remand the matter to the State Department of Health for such further proceedings, not inconsistent with the court's order, as, in the opinion of the court, justice may require. The order shall not be vacated or set aside, either in whole or in part, except for errors of law, unless the court finds that the order of the State Department of Health is not supported by substantial evidence, is contrary to the manifest weight of the evidence, is in excess of the statutory authority or jurisdiction of the State Department of Health, or violates any vested constitutional rights of any party involved in the appeal. Provided, however, an order of the chancery court reversing the denial of a certificate of need by the State Department of Health shall not entitle the applicant to effectuate the certificate of need until either:

"(i) Such order of the chancery court has become final and has not been appealed to the Supreme Court; or

"(ii) The Supreme Court has entered a final order affirming the chancery court.

"(e) Appeals in accordance with law may be had to the Supreme Court of the State of Mississippi from any final judgment of the chancery court.

"(2) The provisions of this subsection (2) shall apply to any party appealing any final order of the State Department of Health pertaining to a certificate of need for any health-care facility as defined in Section 41-7-173(h), with the exception of any home health agency as defined in Section 41-7-173(h)(ix):

"(a) There shall be a "stay of proceedings" of any final order issued by the State Department of Health pertaining to the issuance of a certificate of need for the establishment, construction, expansion or replacement of a health-care facility for a period of thirty (30) days from the date of the order, if an existing provider located in the same service area where the health-care facility is or will be located has requested a hearing during the course of review in opposition to the issuance of the certificate of need.

The stay of proceedings shall expire at the termination of thirty (30) days; however, no construction, renovation or other capital expenditure that is the subject of the order shall be undertaken, no license to operate any facility that is the subject of the order shall be issued by the licensing agency, and no certification to participate in the Title XVIII or Title XIX programs of the Social Security Act shall be granted, until all statutory appeals have been exhausted or the time for such appeals has expired. Notwithstanding the foregoing, the filing of an appeal from a final order of the State Department of Health or the chancery court for the issuance of a certificate of need shall not prevent the purchase of medical equipment or development or offering of institutional health services granted in a certificate of need issued by the State Department of Health.

"(b) In addition to other remedies now available at law or in equity, any party aggrieved by any such final order of the State Department of Health shall have the right of appeal to the Chancery Court of the First Judicial District of Hinds County, Mississippi, which appeal must be filed within twenty (20) days after the date of the final order. Provided, however, that any appeal of an order disapproving an application for such a certificate of need may be made to the chancery court of the county where the proposed construction, expansion or alteration was to be located or the new service or purpose of the capital expenditure was to be located. Such appeal must be filed in accordance with the twenty (20) days for filing as heretofore provided. Any appeal shall state briefly the nature of the proceedings before the State Department of Health and shall specify the order complained of.

"(c) Upon the filing of such an appeal, the clerk of the chancery court shall serve notice thereof upon the State Department of Health, whereupon the State Department of Health shall, within thirty (30) days of the date of the filing of the appeal, certify to the chancery court the record in the case, which records shall include a transcript of all testimony, together with all exhibits or copies thereof, all pleadings, proceedings, orders, findings and opinions entered in the case; provided, however, that the parties and the State Department of Health may stipulate that a specified portion only of the record shall be certified to the court as the record on appeal. The chancery court shall give preference to any such appeal from a final order by the State Department of Health in a certificate of need proceeding, and shall render a final order regarding such appeal no later than one hundred twenty (120) days from the date of the final order by the State Department of Health. If the chancery court has not rendered a final order within this 120-day period, then the final order of the State Department of Health shall be deemed to have been affirmed by the chancery court, and any party to the appeal shall have the right to appeal from the chancery court to the Supreme Court on the record certified by the State Department of Health as otherwise provided in paragraph (g) of this subsection. In the event the chancery court has not rendered a final order within the 120-day period and an appeal is made to the Supreme Court as provided herein, the Supreme Court shall remand the case to the chancery court to make an award of costs, fees, reasonable expenses and attorney's fees incurred in favor of appellee payable by the appellant(s) should the Supreme Court affirm the order of the State Department of Health.

"(d) Any appeal of a final order by the State Department of Health in a certificate of need proceeding shall require the giving of a bond by the appellant(s) sufficient to secure the appellee against the loss of costs, fees, expenses and attorney's fees incurred in defense of the appeal, approved by the chancery court within five (5) days of the date of filing the appeal.

"(e) No new or additional evidence shall be introduced in the chancery court but the case shall be determined upon the record certified to the court.

"(f) The court may dispose of the appeal in termtime or vacation and may sustain or dismiss the appeal, modify or vacate the order complained of in whole or in part and may make an award of costs, fees, expenses and attorney's fees, as the case may be; but in case the order is wholly or partly vacated, the court may also, in its discretion, remand the matter to the State Department of Health for such further proceedings, not inconsistent with the court's order, as, in the opinion of the court, justice may require. The court, as part of the final order, shall make an award of costs, fees, reasonable expenses and attorney's fees incurred in favor of appellee payable by the appellant(s) should the court affirm the order of the State Department of Health. The order shall not be vacated or set aside, either in whole or in part, except for errors of law, unless the court finds that the order of the State Department of Health is not supported by substantial evidence, is contrary to the manifest weight of the evidence, is in excess of the statutory authority or jurisdiction of the State Department of Health, or violates any vested constitutional rights of any party involved in the appeal. Provided, however, an order of the chancery court reversing the denial of a certificate of need by the State Department of Health shall not entitle the applicant to effectuate the certificate of need until either:

"(i) Such order of the chancery court has become final and has not been appealed to the Supreme Court; or

"(ii) The Supreme Court has entered a final order affirming the chancery court.

"(g) Appeals in accordance with law may be had to the Supreme Court of the State of Mississippi from any final judgment of the chancery court.

"(h) Within thirty (30) days from the date of a final order by the Supreme Court or a final order of the chancery court not appealed to the Supreme Court that modifies or wholly or partly vacates the final order of the State Department of Health granting a certificate of need, the State Department of Health shall issue another order in conformity with the final order of the Supreme Court, or the final order of the chancery court not appealed to the Supreme Court."

Cross References —

Applicability of this section to notices of appeals from decisions relative to the licensing of birthing centers, see § 41-77-21.

Federal Aspects—

Title XVIII and Title XIX programs of the Social Security Act, see 42 USCS §§ 1395 et seq. and 1396 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Constitutionality.
3. Substantial evidence.
4. No reversible error.

1. In general.

Granting to the medical center a certificate of need application to relocate was proper because the medical center demonstrated the deficiencies in its current location and its reasons for needing a new facility, and also provided evidence of its long-term plans and the recommendations of firms regarding the appropriateness of the relocation; the Mississippi State Department of Health's decision that the current location has exceeded its useful life was not against the manifest weight of the evidence, nor was its decision arbitrary or capricious. St. Dominic-Jackson Mem'l Hosp. v. Miss. State Dep't of Health, 954 So. 2d 505, 2007 Miss. App. LEXIS 245 (Miss. Ct. App. 2007).

Substantial evidence did not exist to support a State Health Department's issuance of a certificate of need (CON), and the chancellor correctly revoked the CON because a hospital system's proposal was actually a proposal to add beds, and a different criterion under Miss. Code Ann. § 41-7-191 should have been applied; the hospital system admitted that it could not meet the correct criterion. Singing River Hosp. Sys. v. Biloxi Reg'l Med. Ctr., 928 So. 2d 810, 2006 Miss. LEXIS 121 (Miss. 2006).

Decision by the Mississippi State Department of Health to partially grant a certificate of need in an amended relocation application was reversed under Miss. Code Ann. § 41-7-201(2)(f) because the appropriate standard of need was not met for a new hospital; the application was not really for a relocation. St. Dominic-Madison County Med. Ctr. v. Madison County Med. Ctr., 2005 Miss. LEXIS 560 (Miss. Sept. 8, 2005), sub. op., op. withdrawn, 928 So. 2d 822, 2006 Miss. LEXIS 224 (Miss. 2006).

Court erred in reversing the Mississippi State Department of Health's approval of a corporation's application for a certificate of need for the establishment of a long-term acute care hospital because the corporation's calculation of average length of stay was supported by substantial evidence under Miss. Code Ann. § 41-7-201(2)(f) and was not arbitrary or capricious. Miss. State Dep't of Health v. Rush Care, Inc., 882 So. 2d 205, 2004 Miss. LEXIS 1131 (Miss. 2004).

Certificate of need to establish cardiac catheterization and open-heart surgery services properly granted to hospital where the health department considered both the impact on existing providers and the need for these services to the area; the methodology used to derive market share was not so flawed as to render the decision arbitrary or capricious. Delta Regional Med. Ctr., v. Mississippi State Dep't of Health, 759 So. 2d 1174, 1999 Miss. LEXIS 384 (Miss. 1999).

Supreme Court will not reverse final order of Mississippi State Department of Health unless agency's decision was arbitrary or capricious. Cain v. Mississippi State Dep't of Health, 666 So. 2d 506, 1995 Miss. LEXIS 621 (Miss. 1995).

The Mississippi State Health Department's use of market share analysis to determine a healthcare provider's population base in reviewing an application for a certificate of need to establish a cardiac catheterization service was not arbitrary or capricious; the market share analysis is merely statistical method used to evaluate the need for a particular service, and it enables the Mississippi State Department of Health to determine what portion of the service area's population the applicant is likely to serve. Mississippi State Dep't of Health v. Golden Triangle Regional Medical Center, 603 So. 2d 854 (Miss. 1992).

The Mississippi State Health Department's use of market share analysis to determine population base in reviewing certificate of need applications is not arbitrary or capricious. HTI Health Services, Inc. v. Mississippi State Dep't of Health, 603 So. 2d 848, 1992 Miss. LEXIS 361 (Miss. 1992).

2. Constitutionality.

Miss. Code Ann. § 41-7-201, purporting to allow a health care provider to appeal the Mississippi State Department of Health's (MDH) denial of the provider's application for a certificate of need directly to the supreme court, violated Miss. Const. Art. VI, § 146 because the statute impermissibly conferred original jurisdiction on the supreme court, as, (1) under Miss. Const. Art. I, §§ 1-2, the legislature could not confer jurisdiction on courts not given or authorized to be given by the Mississippi Constitution, (2) the "revisory" appellate jurisdiction conferred on the supreme court in Miss. Const. Art. VI, § 146 applied only to judicial decisions rendered by a tribunal clothed with judicial power, (3) no certificate of need procedure existed at common law, (4) the nature of a certificate of need proceeding was permit-like and often nonadversarial, and (5) the final order of the MDH was issued by the State Health Officer, who was not statutorily required to be an attorney, under Miss. Code Ann. § 41-3-5.1, so the MDH lacked the indicia to be considered a tribunal of the character from which the legislature was authorized to grant appeals directly to the supreme court. Dialysis Solutions, LLC v. Miss. State Dep't of Health, 96 So. 3d 713, 2012 Miss. LEXIS 307 (Miss. 2012).

3. Substantial evidence.

Judgment awarding a company a certificate of need allowing it to relocate nursing home beds was reversed because the Mississippi State Department of Health did not act arbitrarily or capriciously, outside of its authority, or violate any vested constitutional rights in denying the certificate of need as pursuant to Miss. Code Ann. § 41-7-193(1), there was substantial evidence in the record to support the finding that the relocation project was not consistent with the State Health Plan and under Miss. Code Ann. § 41-7-201(2)(f), there was substantial evidence showing that the relocation of the nursing home beds would have a significant adverse affect on the ability of an existing facility or service to provide indigent care. State Dep't of Health v. Mid-South Assocs., LLC, 25 So. 3d 358, 2009 Miss. App. LEXIS 205 (Miss. Ct. App. 2009), cert. denied, 24 So. 3d 1038, 2010 Miss. LEXIS 20 (Miss. 2010).

Mississippi State Department of Health (MSDH) did not err in granting a certificate of need (CON) to a company for the provision of mobile magnetic resonance imaging (MRI) services because, even though a customer terminated its service agreement with the MRI company while the CON application was pending, substantial evidence supported the MSDH's determination that the MRI company would still be able to perform enough procedures for its remaining customers to meet the annual requirements of the state health plan. Miss. State Dep't of Health v. Baptist Mem. Hospital-DeSoto, Inc., 984 So. 2d 967, 2008 Miss. LEXIS 323 (Miss. 2008).

The granting by the Mississippi State Department of Health of a certificate of need to establish a forty-bed, long-term, acute-care hospital (LTACH) was upheld because under Miss. Code Ann. § 41-7-201(2)(f), substantial evidence supported the finding that the applicant met the twin requirements of 450 LTACH admissions with an average length of stay of 25 days. Greenwood Leflore Hosp. v. Miss. State Dep't of Health, 980 So. 2d 931, 2008 Miss. LEXIS 199 (Miss. 2008).

Mississippi State Department of Health did not err when it granted a certificate of need to provide magnetic resonance services to an applicant where the evidence showed that the projected unit would have provided for a minimum number of procedures per year based on information in a state health plan, pursuant to Miss. Code Ann. § 41-7-193(1); moreover, there was substantial evidence to show that a full range of services was available, and the Department did not base its decision on faulty financial projections. Open MRI, LLC v. Miss. State Dep't of Health, 939 So. 2d 813, 2006 Miss. App. LEXIS 737 (Miss. Ct. App. 2006).

There was substantial evidence to support the department of health's decision to grant a hospital a certificate of need (CON) to allow the addition of 81 new acute care beds, because, inter alia, the department staff had weighed and considered all the factors under the Mississippi State Health Plan and the Mississippi Certificate of Need Review Manual general criteria, and the hospital adequately documented the need for the proposed project, based on growth and utilization of facilities and services and an occupancy rate in excess of 70 percent for the most recent two years. St. Dominic-Jackson Mem'l Hosp. v. Miss. State Dep't of Health, 910 So. 2d 1077, 2005 Miss. LEXIS 587 (Miss. 2005).

There was substantial evidence to support the department of health's decision to grant a hospital a certificate of need (CON) to allow an expansion, because, inter alia, the department staff found that the project was in substantial compliance for the expansion and renovation contained in the Mississippi State Health Plan and the Mississippi Certificate of Need Review Manual, and the need requirement was upheld because of the rapid growth in the types of services offered at the facility, the increased number of physicians on the hospital's medical staff, and the increase in the demand for ancillary services. St. Dominic-Jackson Mem'l Hosp. v. Miss. State Dep't of Health, 910 So. 2d 1077, 2005 Miss. LEXIS 587 (Miss. 2005).

4. No reversible error.

Mississippi Department of Health (DOH) properly approved a certificate of need (CON) for a behavioral health center to add twenty adolescent psychiatric beds in Warren County, pursuant to Miss. Code Ann. § 41-7-191(4)(a)(iii), because a previously approved CON for such beds was never acted upon and, therefore, the exception to the moratorium on adolescent psychiatric beds under § 41-7-191(4)(a)(iii) remained available to the DOH; the DOH's interpretation of § 41-7-191(4)(a)(iii) was reasonable. Diamond Grove Ctr., LLC v. Miss. State Dep't of Health, 98 So. 3d 1068, 2012 Miss. LEXIS 506 (Miss. 2012).

In a case involving the revocation of two certificates of need (CONs), although a hearing officer made an improper reference about giving deference to the Mississippi State Department of Health, there was no reversible error because it was clear that the hearing officer acted according to her mandate to make recommended findings of fact and conclusions of law to a state health officer. Brentwood Health Mgmt. of Miss., LLC v. Miss. State Dep't of Health, 29 So. 3d 775, 2009 Miss. App. LEXIS 261 (Miss. Ct. App. 2009).

§ 41-7-202. Stay of commission proceedings pending appeal.

There shall be a "stay of proceedings" of any written decision of the State Department of Health pertaining to a certificate of need for a home health agency, as defined in Section 41-7-173(h)(ix), for a period of thirty (30) days from the date of that decision. The stay of proceedings shall expire at the termination of thirty (30) days; however, no license to operate any such home health agency that is the subject of the decision shall be issued by the licensing agency, and no certification for such home health agency to participate in the Title XVIII or Title XIX programs of the Social Security Act shall be granted until all statutory appeals have been exhausted or the time for such appeals has expired. The stay of proceedings provided for in this section shall not apply to any party appealing any final order of the State Department of Health pertaining to a certificate of need for any health-care facility as defined in Section 41-7-173(h), with the exception of any home health agency as defined in Section 41-7-173(h)(ix).

HISTORY:

Laws, 1983, ch. 484, § 9; Laws, 1985, ch. 534, § 12; Laws, 1986, ch. 437, § 45; Laws, 1992, ch. 512, § 2, eff from and after passage (approved May 14, 1992).

Editor's Notes —

Laws of 1986, ch. 437, § 51, eff from and after July 1, 1986, amended Laws of 1985, ch. 534, § 15, by deleting the provision which would have repealed this section as of July 1, 1986.

Federal Aspects—

Provisions of Title XVIII of the Social Security Act, see 42 USCS §§ 1395 et seq.

Provisions of Title XIX of the Social Security Act, see 42 USCS §§ 1396 et seq.

§ 41-7-203. Repealed.

Repealed by Laws, 1983, ch. 484, § 11, eff from and after April 9, 1983. [Laws, 1979, ch. 451, § 17]

Editor's Notes —

Former § 41-7-203 created the position of administrative appeal judge, and provided for the appointment to fill the position.

§ 41-7-205. Determination of reviewability of proposed project.

An applicant proposing a project which may be governed by the provisions of Section 41-7-171 et seq. may submit a determination of reviewability request to obtain a written declaratory opinion regarding the reviewability of the proposed project. If such opinion is sought, the requestor and department shall abide by the provisions of Section 25-43-2.103 as they are effective on July 1, 2016, except that the department's response shall be provided within forty-five (45) days of the request.

HISTORY:

Laws, 1979, ch. 451, § 11; Laws, 1980, ch. 493, § 10; Laws, 1982, ch. 482, § 7; Laws, 1985, ch. 534, § 13; Laws, 1986, ch. 338; Laws, 1986, ch. 437, § 46; Laws, 1987, ch. 515, § 7; Laws, 1999, ch. 583, § 5; Laws, 2011, ch. 540, § 2; Laws, 2016, ch. 412, § 5, eff from and after July 1, 2016.

§ 41-7-207. Emergency replacement of facilities; expedited review.

Notwithstanding any other provisions of Sections 41-7-171 through 41-7-209, except when the owner of a damaged health care facility applies to repair or rebuild the facility in accordance with the provisions of Section 41-7-191(13), when the need for any emergency replacement occurs, the certificate of need review process shall be expedited by promulgation of administrative procedures for expenditures necessary to alleviate an emergency condition and restore health care access. Emergency replacement means the replacement, and/or a necessary relocation, of all or the damaged part of the facilities or equipment the replacement of which is not exempt from certificate of need review under the medical equipment replacement exemption provided in Section 41-7-191(1)(f), without which the operation of the facility and the health and safety of patients would be immediately jeopardized and health care access would be denied to such patients. Expenditures under this section shall be limited to the replacement of those necessary facilities or equipment, the loss of which constitutes an emergency; however, in the case of the destruction or major damage to a health care facility, the department shall be authorized to issue a certificate of need to address the current and future health care needs of the community, including, but not limited to, the expansion of the health care facility and/or the relocation of the health care facility. In exercising the authority granted in this section, the department may waive all or part of the required certificate of need application fee for any application filed under this section if the expenditure would create a further hardship or undue burden on the health care facility.

HISTORY:

Laws, 1979, ch. 451, § 19; Laws, 1999, ch. 583, § 6; Laws, 2015, ch. 491, § 2, eff from and after passage (approved Apr. 23, 2015).

§ 41-7-209. Violations.

(1) Any person or entity violating the provisions of Sections 41-7-171 through 41-7-209, or regulations promulgated thereunder, by not obtaining a certificate of need, by deviating from the provisions of a certificate of need, or by refusing or failing to cooperate with the State Department of Health in its

exercise or execution of its functions, responsibilities and powers shall be subject to the following:

(a) Revocation of the license of a health-care facility or a designated section, component or bed service thereof, or revocation of the license of any other person for which the State Department of Health is the licensing agency. If the State Department of Health lacks jurisdiction to revoke the license of such person, the State Health Officer shall recommend and show cause to the appropriate licensing agency that such license should be revoked.

(b) Nonlicensure by the State Department of Health of a specific or designated bed service offered by the entity or person;

(c) Nonlicensure by the State Department of Health where infractions occur concerning the acquisition or control of major medical equipment;

(d) Revoking, rescinding or withdrawing a certificate of need previously issued.

(2) Violations of Sections 41-7-171 through 41-7-209, or any rules or regulations promulgated in furtherance thereof by intent, fraud, deceit, unlawful design, willful and/or deliberate misrepresentation, or by careless, negligent or incautious disregard for such statutes or rules and regulations, either by persons acting individually or in concert with others, shall constitute a misdemeanor and shall be punishable by a fine not to exceed One Thousand Dollars ($1,000.00) for each such offense. Each day of continuing violation shall be considered a separate offense. The venue for prosecution of any such violation shall be in any county of the state wherein any such violation, or portion thereof, occurred.

(3) The Attorney General, upon certification by the State Health Officer, shall seek injunctive relief in a court of proper jurisdiction to prevent violations of Sections 41-7-171 through 41-7-209 or any rules or regulations promulgated in furtherance of Sections 41-7-171 through 41-7-209 in cases where other administrative penalties and legal sanctions imposed have failed to prevent or cause a discontinuance of any such violation.

(4) Major third party payers, public or private, shall be notified of any violation or infraction under this section and shall be requested to take such appropriate punitive action as is provided by law.

HISTORY:

Laws, 1979, ch. 451, § 18; Laws, 1980, ch. 493, § 11; Laws, 1981, ch. 484, § 15; Laws, 1986, ch. 437, § 47, eff from and after July 1, 1986.

Cross References —

Applicability of this section to violations of provisions relative to the licensing of birthing centers, see § 41-77-23.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

STATEWIDE HEALTH COORDINATING COUNCIL [REPEALED]

Sec.	
41-7-301.	Repealed.

Sec.	
41-7-302.	Repealed.
41-7-303.	Repealed.
41-7-304.	Repealed.
41-7-305.	Repealed.

§ 41-7-301. Repealed.

Repealed by Laws, 1986, ch. 437, § 48, eff from and after July 1, 1986.

[Laws, 1981, ch. 407, § 1; Laws, 1982, ch. 315, § 1; Laws, 1984, ch. 368, § 1; reenacted, Laws, 1986, ch. 339, § 1]

Editor's Notes —

Former § 41-7-301 created the statewide health coordinating council.

§ 41-7-302. Repealed.

Repealed by Laws, 1987, ch. 515, § 8(7) eff from and after July 1, 1988.

[Laws, 1986, ch. 437, § 52; Laws, 1987, ch. 515, § 8]

Editor's Notes —

Former Section 41-7-302 related to the establishment of a statewide health coordinating council.

§ 41-7-303. Repealed.

Repealed by Laws, 1986, ch. 437, § 48, eff from and after July 1, 1986.

[Laws, 1981, ch. 407, § 2; Laws, 1982, § 315, § 2; Laws, 1984, ch. 368, § 2; reenacted, Laws, 1986, ch. 339, § 2]

Editor's Notes —

Former Section 41-7-303 specified the duties and functions of the statewide health coordinating council.

§ 41-7-304. Repealed.

Repealed by Laws, 1987, ch. 515, § 9(3), eff from and after July 1, 1988.

[Laws, 1986, ch. 437, § 53; Laws, 1987, ch. 515, § 9]

Editor's Notes —

Former Section 41-7-304 related to the duties and functions of the statewide health coordinating council.

§ 41-7-305. Repealed.

Repealed by Laws, 1981, ch. 407, § 5, eff from and after December 31, 1988.

[Laws, 1981, ch. 407, § 3; Laws, 1982, ch. 315, § 3; reenacted, Laws, 1984, ch. 368, § 3; reenacted, Laws, 1986, ch. 339, § 3]

Editor's Notes —

Former § 41-7-305 prohibited members of the commission from voting on matters in which they had an interest, and required disclosure of such interests.

Laws of 1981, ch. 407, § 5, provided for the repeal of this section effective from and after October 1, 1982. Laws of 1982, ch. 315, § 4, extended the repeal date until December 31, 1984. Subsequently, Laws of 1984, ch. 368, § 4, further extended the repeal date until December 31, 1986. Finally, Laws of 1986, ch. 339, § 4, further extended the repeal date until December 31, 1988.

HEALTH MAINTENANCE ORGANIZATIONS [REPEALED]

Sec.
41-7-401. Repealed.

§ 41-7-401. Repealed.

Repealed by Laws, 1995, ch. 613, § 35, eff from and after July 1, 1995. [Laws, 1986, ch. 483; Laws, 1988, ch. 555; Laws, 1994, ch. 422, § 6]

Editor's Notes —

Former § 41-7-401 related to issuance of certificates of authority for health maintenance organizations. For current provisions relating to health maintenance organizations, see §§ 83-41-301 et seq.

CHAPTER 9.

REGULATION OF HOSPITALS; HOSPITAL RECORDS

Regulation of Hospitals. 41-9-1
Reimbursement for Trauma Care Service. 41-9-51
Hospital Records — Preparation, Preservation and Destruction. 41-9-61
Hospital Records — Use in Trials and Administrative Hearings. 41-9-101
Rural Hospital Flexibility Act. 41-9-201
Rural Health Availability Act. 41-9-301

REGULATION OF HOSPITALS

Sec.
41-9-1. Declaration of purpose.
41-9-3. Definitions.
41-9-5. Repealed.
41-9-7. License.
41-9-9. Application for license [Repealed effective July 1, 2020].
41-9-11. Issuance and renewal of license.
41-9-13. Issuance of temporary licenses.
41-9-15. Denial or revocation of license; notice, hearings and review.
41-9-17. Rules, regulations and standards.
41-9-19. Effective date of rules, regulations or standards.
41-9-21. Inspections and consultations.
41-9-23. Information confidential.
41-9-25 and 41-9-27. Repealed.
41-9-29. Annual report of licensing agency.
41-9-31. Judicial review.
41-9-33. Penalties.
41-9-35. Injunction.
41-9-37. Paid educational leave for hospital employees.
41-9-39. Hospitals to offer influenza immunizations to all inpatients age sixty-five or older.

§ 41-9-1. Declaration of purpose.

The purpose of Sections 41-9-1 through 41-9-39 is to protect and promote the public health by providing for the development, establishment and enforcement of certain standards in the construction, maintenance and operation of hospitals which will insure safe, sanitary and reasonably adequate care and treatment of individuals in hospitals. The Legislature hereby finds that the protection and promotion of the public health requires the measures provided for in said sections.

HISTORY:

Codes, 1942, § 7146.5-02; Laws, 1948, ch. 398, § 2; Laws, 2014, ch. 433, § 6, eff from and after July 1, 2014.

Cross References —

Operation and maintenance of ambulance service, see §§ 41-55-1 et seq.

Air ambulance service districts, see §§ 41-55-31 et seq.

Evaluation and review of professional health services providers, see §§ 41-63-1 et seq.

Operation of unit of hospital as birthing center under license issued to hospital, see § 41-77-1.

Hospitals licensed under this chapter to provide reasonable access to the Maternal Mortality Review Committee to all relevant medical records associated with a case under committee review, see § 41-112-1.

Required reporting of abuse or exploitation of patients and residents of hospitals, see § 43-47-37.

Disciplinary action by hospital with respect to physician's hospital privileges, see § 73-25-93.

JUDICIAL DECISIONS

1. In general.

It was error to affirm a hospital's decision to deny a doctor's application for medical-staff privileges because the hospital violated the doctor's due-process rights and its bylaws when it allowed the credentials committee chair to actively participate in the administrative process; the review hearing procedures established by the bylaws disqualified the committee chair from participating in the deliberation and decision since he participated in the initial adverse credentialing recommendation. Molleston v. River Oaks Hosp., Inc., 195 So. 3d 815, 2015 Miss. App. LEXIS 572 (Miss. Ct. App. 2015), cert. denied, 209 So. 3d 429, 2016 Miss. LEXIS 296 (Miss. 2016).

The scope of judicial review of a decision by a private hospital, which was licensed pursuant to § 41-9-1 to terminate a physician's staff privileges, was limited to a determination of whether the procedures followed by the hospital violated its own bylaw provisions for due process. Section 73-25-93 limits judicial surveillance of hospital disciplinary proceedings to the narrow inquiry of whether the hospital complied with the procedural due process requirements prescribed by its own bylaws. In § 73-25-93, the legislature recognized the authority of a licensed hospital to control and regulate its staff privileges. The statute delineates no distinction between private or public hospitals in that it refers to any licensed hospital. Wong v. Garden Park Community Hosp., Inc., 565 So. 2d 550, 1990 Miss. LEXIS 289 (Miss. 1990).

RESEARCH REFERENCES

ALR.

Validity and construction of statute requiring establishment of "need" as precondition to operation of hospital or other facilities for the care of sick people. 61 A.L.R.3d 278.

Am. Jur.

40A Am. Jur. 2d, Hospitals and Asylums §§ 3-6.

CJS.

41 C.J.S., Hospitals § 7.

Practice References.

Health Care Administration Library (CD-ROM) (LexisNexis).

Health Care Law Sourcebook: A Compendium of Federal Laws, Regulations and Documents Relating to Health Care (Matthew Bender).

§ 41-9-3. Definitions.

As used in Sections 41-9-1 through 41-9-35:

(a) "Hospital" means a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment and care of individuals suffering from physical or mental infirmity, illness, disease, injury or deformity, or a place devoted primarily to providing obstetrical or other medical, surgical or nursing care of individuals, whether or not any such place be organized or operated for profit and whether any such place be publicly or privately owned. The term "hospital" does not include convalescent or boarding homes, children's homes, homes for the aged or other like establishments where room and board only are provided, nor does it include offices or clinics where patients are not regularly kept as bed patients.

(b) "Person" means any individual, firm, partnership, corporation, company, association or joint stock association, and the legal successor thereof.

(c) "Governmental unit" means the state, or any county, municipality or other political subdivision or any department, division, board or other agency of any of the foregoing, excluding all federal establishments.

(d) "Licensing agency" means the State Department of Health.

HISTORY:

Codes, 1942, § 7146.5-01; Laws, 1948, ch. 398, § 1; Laws, 1979, ch. 451, § 22; Laws, 1986, ch. 437, § 14, eff from and after July 1, 1986.

Editor's Notes —

The "Vulnerable Adult Act" was changed to the "Vulnerable Persons Act."

Cross References —

Incorporation of this section's definition of "hospital" into provisions relative to exemptions from sales tax, see § 27-65-111.

State Board of Mental Health powers and duties, see § 41-4-7.

Mississippi Health Care Commission Law of 1979, see §§ 41-7-171 et seq.

Preparation, preservation and disposition of hospital records, see §§ 41-9-61 et seq.

Ambulatory surgical facility owned or operated by hospital or hospital holding, leasing, or management company, see § 41-75-1.

Federal certification of ambulatory surgical facility owned or operated by hospital or hospital holding, leasing, or management company, see § 41-75-1.

Ambulatory surgical facility owned or operated by entity or person other than hospital or hospital holding company, see § 41-75-1.

"Freestanding" ambulatory surgical facility, see § 41-75-1.

"Hospital affiliated" ambulatory surgical facility, see § 41-75-1.

Hospital as defined in this section as "care facility" for purposes of Vulnerable Adults Act, see § 43-47-5.

Applicability of this section to the disclosure of any and all information board of medical licensure has concerning physician to hospitals, see § 73-25-28.

OPINIONS OF THE ATTORNEY GENERAL

Inasmuch as county health departments do not provide care to bed patients, it appears that county health departments are not "hospitals" as defined in Section 41-9-3. Since county health departments are not hospitals, records in the possession of county health departments are not hospital records. 1995 Miss. Op. Att'y Gen. 674.

RESEARCH REFERENCES

Am. Jur.

40A Am. Jur. 2d, Hospitals and Asylums §§ 3-6.

CJS.

41 C.J.S., Hospitals § 7.

§ 41-9-5. Repealed.

Repealed by Laws, 1986, ch. 437, § 48, eff from and after July 1, 1986.

[Codes, 1942, § 7146.5-01; Laws, 1948, ch. 398, § 1; Laws, 1979, ch. 451, § 23; Laws, 1985, ch. 534, § 14; Laws, 1986, ch. 437, § 51]

Editor's Notes —

Former § 41-9-5 authorized the health care commission to delegate its functions.

§ 41-9-7. License.

No person or governmental unit, acting severally or jointly with any other person or governmental unit shall establish, conduct, or maintain a hospital in this state without a license as provided for in Section 41-9-11. No license so granted shall permit, approve or allow child placement activities by any person or governmental unit licensed hereunder.

HISTORY:

Codes, 1942, § 7146.5-03; Laws, 1948, ch. 398, § 3.

Cross References —

Temporary licenses, see § 41-9-13.

Penalty for operation without license, see § 41-9-33.

Injunction against operation without license, see § 41-9-35.

Ambulatory surgical facility owned or operated by hospital or hospital holding, leasing, or management company, see § 41-75-1.

Federal certification of ambulatory surgical facility owned or operated by hospital or hospital holding, leasing, or management company, see § 41-75-1.

Ambulatory surgical facility owned or operated by entity or person other than hospital or hospital holding company, see § 41-75-1.

"Hospital affiliated" ambulatory surgical facility, see § 41-75-1.

"Freestanding" ambulatory surgical facility, see § 41-75-1.

RESEARCH REFERENCES

Am. Jur.

40A Am. Jur. 2d, Hospitals and Asylums §§ 3-6.

CJS.

41 C.J.S., Hospitals § 7.

§ 41-9-9. Application for license [Repealed effective July 1, 2020].

(1) An application for a license shall be made to the licensing agency upon forms provided by it and shall contain such information as the licensing agency reasonably requires, which may include affirmative evidence of ability to comply with such reasonable standards, rules and regulations as are lawfully prescribed under Section 41-9-17. A license, unless suspended or revoked, shall be renewable annually upon payment of a renewal fee of Twenty Dollars ($20.00) for each licensed bed in the hospital, which shall be paid to the licensing agency, with a minimum fee of Five Hundred Dollars ($500.00) per hospital and a maximum fee of Five Thousand Dollars ($5,000.00), and upon filing by the licensee and approval by the licensing agency of an annual report upon such uniform dates and containing such information in such form as the licensing agency prescribes by rule or regulation. Any increase in the fee charged by the licensing agency under this subsection shall be in accordance with the provisions of Section 41-3-65. Each license shall be issued only for the premises and person or persons or other legal entity or entities named in the application and shall not be transferable or assignable except with the written approval of the licensing agency. Licenses shall be posted in a conspicuous place on the licensed premises.

(2) The appropriate licensure fee, according to the schedule herein, shall be paid to the licensing agency and may be paid by check, draft or money order. A license shall not be issued to any hospital until such fee is received by the licensing agency.

(3) A fee known as a "User Fee" shall be applicable and shall be paid to the licensing agency as set out in subsection (2) of this section. Any increase in the fee charged by the licensing agency under this subsection shall be in accordance with the provisions of Section 41-3-65. This user fee shall be assessed for the purpose of the required reviewing and inspections of the proposal of any hospital in which there are additions, renovations, modernizations, expansion, alterations, conversions, modifications or replacement of the entire facility

involved in such proposal. This fee includes the reviewing of architectural plans in all steps required. There shall be a minimum user fee of Fifty Dollars ($50.00) and a maximum user fee of Five Thousand Dollars ($5,000.00).

HISTORY:

Codes, 1942, § 7146.5-04; Laws, 1948, ch. 398, § 4; Laws, 1984, ch. 315, § 1; Laws, 1986, ch. 500, § 23; Laws, 1998, ch. 433, § 1; Laws, 2016, ch. 510, § 5, eff from and after July 1, 2016.

Editor's Notes —

Laws of 2016, ch. 510, § 65 provides:

"SECTION 65. This act shall stand repealed on July 1, 2020."

Cross References —

Ambulatory surgical facility owned or operated by entity or person other than hospital or hospital holding company, see § 41-75-1.

Ambulatory surgical facility owned or operated by hospital or hospital holding, leasing, or management company, see § 41-75-1.

Federal certification of ambulatory surgical facility owned or operated by hospital or hospital holding, leasing, or management company, see § 41-75-1.

"Freestanding" ambulatory surgical facility, see § 41-75-1.

"Hospital affiliated" ambulatory surgical facility, see § 41-75-1.

RESEARCH REFERENCES

Am. Jur.

13A Am. Jur. Pl & Pr Forms (Rev), Hospitals, Forms 1, 2 (petition or application – for license or permit to establish and operate hospital).

§ 41-9-11. Issuance and renewal of license.

Upon receipt of an application for license and the license fee, the licensing agency shall issue a license if the applicant and hospital facilities meet the requirements established under Sections 41-9-1 through 41-9-35, and the requirements of Section 41-7-173 et seq., where determined by the licensing agency to be applicable. A license, unless suspended or revoked, shall be renewable annually, upon filing by the licensee, and approval by the licensing agency of an annual report upon such uniform dates and containing such information in such form as the licensing agency prescribes by regulation and upon paying the annual fee for such license as determined by the schedule and provisions of Section 41-9-9. Each license shall be issued only for the premises and persons or governmental units named in the application and shall not be transferable or assignable except with the written approval of the licensing agency. Licenses shall be posted in a conspicuous place on the licensed premises.

HISTORY:

Codes, 1942, § 7146.5-05; Laws, 1948, ch. 398, § 5; Laws, 1980, ch. 493, § 13; Laws, 1984, ch. 315, § 2; Laws, 1986, ch. 437, § 15, eff from and after July 1, 1986.

Cross References —

Ambulatory surgical facility owned or operated by entity or person other than hospital or hospital holding company, see § 41-75-1.

Ambulatory surgical facility owned or operated by hospital or hospital holding, leasing, or management company, see § 41-75-1.

Federal certification of ambulatory surgical facility owned or operated by hospital or hospital holding, leasing, or management company, see § 41-75-1.

"Freestanding" ambulatory surgical facility, see § 41-75-1.

"Hospital affiliated" ambulatory surgical facility, see § 41-75-1.

RESEARCH REFERENCES

Am. Jur.

13A Am. Jur. Pl & Pr Forms (Rev), Hospitals, Form 8 (order – by administrative agency – granting license for establishment and operation of hospital).

§ 41-9-13. Issuance of temporary licenses.

The licensing agency may issue temporary licenses under Sections 41-9-1 through 41-9-35 which shall be good for not more than six (6) months.

HISTORY:

Codes, 1942, § 7146.5-01; Laws, 1948, ch. 398, § 1; Laws, 1979, ch. 451, § 24; Laws, 1986, ch. 437, § 16, eff from and after July 1, 1986.

Cross References —

Mississippi Health Care Commission Law of 1979, see §§ 41-7-171 et seq.

§ 41-9-15. Denial or revocation of license; notice, hearings and review.

The licensing agency, after notice and opportunity for hearing to the applicant or licensee, is authorized to deny, suspend or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established under Section 41-9-1 through 41-9-35.

Such notice shall be effected by registered mail, or by personal service, setting forth the particular reasons for the proposed action and a fixing date not less than thirty (30) days from the date of such mailing or service, at which the applicant or licensee shall be given an opportunity for a prompt and fair hearing. On the basis of any such hearing, or upon default of the applicant or licensee, the licensing agency shall make a determination specifying its findings of fact and conclusions of law. A copy of such determination shall be sent by registered mail or served personally upon the applicant or licensee. The decision revoking, suspending or denying the license or application shall become final thirty (30) days after it is so mailed or served, unless the applicant or licensee, within such thirty-day period, appeals the decision, pursuant to Section 41-9-31.

The procedure governing hearings authorized by this section shall be in accordance with rules promulgated by the licensing agency. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless the decision is appealed pursuant to Section 41-9-31. Witnesses may be subpoenaed by either party. Compensation shall be allowed to witnesses as in cases in the chancery court. Each party shall pay the expense of his own witnesses. The cost of the record shall be paid by the licensing agency. Any other party desiring a copy of the transcript shall pay therefor the reasonable cost of preparing the same.

HISTORY:

Codes, 1942, § 7146.5-06; Laws, 1948, ch. 398, § 6; Laws, 1980, ch. 493, § 14, eff from and after passage (approved May 13, 1980).

Editor's Notes —

Within sections 41-9-1 through 41-9-35, referred to in this section, Section 41-9-5, was repealed by Laws, 1986, ch. 437, § 48, effective from and after July 1, 1986. Sections 41-9-25 and 41-9-27, were repealed by Laws, 1980, ch. 493, § 22, effective from and after May 13, 1980.

Cross References —

Subpoena for witnesses, generally, see § 13-3-93.

RESEARCH REFERENCES

Am. Jur.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration – by license holder – against administrative agency – to enjoin further proceedings to suspend or revoke license – attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

13A Am. Jur. Pl & Pr Forms (Rev), Hospitals, Forms 3 et seq. (licensing and regulation).

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Form 47 (petition or application – allegation – denial of proper hearing and failure to apprise licensee of complaint against such licensee as grounds for review of revocation of license).

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 61-63 (reinstatement).

§ 41-9-17. Rules, regulations and standards.

The licensing agency shall adopt, amend, promulgate and enforce such rules, regulations and standards with respect to all hospitals to be licensed under Section 41-9-11 as may be designed to further the accomplishment of the purposes of Sections 41-9-1 through 41-9-35 in promoting safe and adequate treatment of individuals in hospitals in the interest of public health, safety and welfare. Any rule, regulation or standard adopted hereunder shall be considered as promulgated and effective from and after the time the same is recorded and indexed in a book to be maintained by the licensing agency in its main office in the State of Mississippi, entitled "Minimum Standard of Operation for Mississippi Hospitals." Said book shall be open and available to all hospitals and the public generally at all reasonable times. Upon the adoption of any such rule, regulation or standard, the licensing agency shall mail copies thereof to all hospitals in the state which have filed with said agency their names and addresses for this purpose, but the failure to mail the same or the failure of the hospital to receive the same shall in nowise affect the validity thereof. No such rules, regulations or standards shall be adopted or enforced which would have the effect of denying a license to a hospital or other institution required to be licensed, solely by reason of the school or system of practice employed or permitted to be employed therein.

HISTORY:

Codes, 1942, § 7146.5-07; Laws, 1948, ch. 398, § 7; Laws, 1980, ch. 493, § 15; Laws, 1986, ch. 437, § 17, eff from and after July 1, 1986.

Cross References —

Ambulatory surgical facility owned or operated by entity or person other than hospital or hospital holding company, see § 41-75-1.

Ambulatory surgical facility owned or operated by hospital or hospital holding, leasing, or management company, see § 41-75-1.

Federal certification of ambulatory surgical facility owned or operated by hospital or hospital holding, leasing, or management company, see § 41-75-1.

"Freestanding" ambulatory surgical facility, see § 41-75-1.

"Hospital affiliated" ambulatory surgical facility, see § 41-75-1.

JUDICIAL DECISIONS

1. In general.

It was error to affirm a hospital's decision to deny a doctor's application for medical-staff privileges because the hospital violated the doctor's due-process rights and its bylaws when it allowed the credentials committee chair to actively participate in the administrative process; the review hearing procedures established by the bylaws disqualified the committee chair from participating in the deliberation and decision since he participated in the initial adverse credentialing recommendation. Molleston v. River Oaks Hosp., Inc., 195 So. 3d 815, 2015 Miss. App. LEXIS 572 (Miss. Ct. App. 2015), cert. denied, 209 So. 3d 429, 2016 Miss. LEXIS 296 (Miss. 2016).

In an action contending, inter alia, that the refusal of defendant hospital to admit one plaintiff to deliver her baby, allegedly because she was black and indigent, violated §§ 41-9-1 through 41-9-35, the court held that, in general, the statutes were irrelevant to plaintiff's claims; § 41-9-17, the only section that might be interpreted as germane, was inapplicable as imposing no duties which the hospital owed plaintiff but merely establishing an enforcement system for associated regulations the contents of which plaintiff failed to provide proof. Campbell v. Mincey, 413 F. Supp. 16, 1975 U.S. Dist. LEXIS 15069 (N.D. Miss. 1975), aff'd, 542 F.2d 573 (5th Cir. Miss. 1976).

§ 41-9-19. Effective date of rules, regulations or standards.

Any hospital which is in operation at the time of promulgation of any applicable rules, regulations or standards under Section 41-9-17, shall be given a reasonable time, under the particular circumstances not to exceed one year from the date of such promulgation, within which to comply with such rules, regulations or standards.

HISTORY:

Codes, 1942, § 7146.5-08; Laws, 1948, ch. 398, § 8.

§ 41-9-21. Inspections and consultations.

The licensing agency shall make or cause to be made such inspections and investigations as it deems necessary. The licensing agency may prescribe by regulations that any licensee or applicant desiring to make specified types of alteration or addition to the facilities or to construct new facilities shall, before commencing such alteration, addition or new construction, submit plans and specifications therefor to the licensing agency for preliminary inspection and approval or recommendations with respect to compliance with the rules, regulations or standards authorized in Section 41-9-17. Necessary conferences and consultations may be provided.

HISTORY:

Codes, 1942, § 7146.5-09; Laws, 1948, ch. 398, § 9.

§ 41-9-23. Information confidential.

Information received by the licensing agency through filed reports, inspection, or as otherwise authorized under Sections 41-9-1 through 41-9-35 shall not be disclosed publicly in such manner as to identify individuals, except in a proceeding involving the questions of licensure; however, the licensing agency may utilize statistical data concerning types of services and the utilization of these services for hospitals in performing the statutory duties imposed upon it by Section 41-7-171, et seq. and by Section 41-9-29.

HISTORY:
Codes, 1942, § 7146.5-12; Laws, 1948, ch. 398, § 12; Laws, 1984, ch. 362, § 1, eff from and after July 1, 1984.

§§ 41-9-25 and 41-9-27. Repealed.

Repealed by Laws, 1980, ch. 493, § 22, eff from and after May 13, 1980. [Laws 1948, ch. 398, §§ 10, 11]

Editor's Notes —
Former § 41-9-25 related to the advisory hospital licensing council, appointed by the Mississippi Commission on Hospital Care, to advise and consult with the commission in carrying out its functions.

Former § 41-9-27 set out the specific duties of the advisory hospital council.

§ 41-9-29. Annual report of licensing agency.

The licensing agency shall prepare and publish an annual report of its activities and operations under Sections 41-9-1 et seq. A reasonable number of copies of such publication(s) shall be available in the office of the licensing agency to be furnished to persons requesting them, for a nominal fee.

HISTORY:
Codes, 1942, § 7146.5-13; Laws, 1948, ch. 398, § 13; Laws, 1986, ch. 437, § 18, eff from and after July 1, 1986.

Cross References —
Use of statistical data collected under this section, see § 41-9-23.

§ 41-9-31. Judicial review.

Any applicant or licensee aggrieved by the decision of the licensing agency after a hearing may, within thirty (30) days after the mailing or serving of notice of the decision as provided in Section 41-9-15, file a notice of appeal in the chancery court of the First Judicial District of Hinds County or the chancery court of the county in which the hospital is located or to be located, and the chancery clerk thereof shall serve a copy of the notice of appeal upon the licensing agency. Thereupon the licensing agency shall, within sixty (60) days or such additional time as the court may allow from such notice, certify and file with the court a copy of the record and decision, including the transcript of the hearings, on which the decision is based. Findings of fact by the licensing agency shall be conclusive unless substantially contrary to the weight of the evidence. However, upon good cause shown, the court may remand the case to the licensing agency to take further evidence, and the licensing agency may thereupon affirm, reverse or modify its decision. The court may affirm, modify or reverse the decision of the licensing agency, and either the applicant or licensee or the licensing agency may appeal from this decision to the Supreme Court as in other cases in the chancery court. Pending final disposition of the matter of the status quo of the applicant or licensee shall be preserved, except as the court otherwise orders in the public interest. Rules with respect to court costs in other cases in chancery shall apply equally to cases hereunder.

HISTORY:

Codes, 1942, § 7146.5-14; Laws, 1948, ch. 398, § 14; Laws, 1980, ch. 493, § 16; Laws, 1986, ch. 437, § 19, eff from and after July 1, 1986.

Cross References —

Denial or revocation of license, see § 41-9-15.

Effect of appeal on finality of decision, see § 41-9-15.

RESEARCH REFERENCES

Am. Jur.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration – by license holder – against administrative agency – to enjoin further proceedings to suspend or revoke license – attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 21 et seq. (grant or refusal of license).

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 41 et seq. (revocation, suspension, and reinstatement of licenses).

§ 41-9-33. Penalties.

Any person establishing, conducting, managing or operating any hospital without a license as provided for in Section 41-9-11 shall be guilty of a misdemeanor, and upon conviction, shall be fined not more than One Thousand Dollars ($1,000.00) for the first offense and not more than One Thousand Dollars ($1,000.00) for each subsequent offense. Each day of a continuing violation after conviction shall be considered a separate offense.

HISTORY:

Codes, 1942, § 7146.5-15; Laws, 1948, ch. 398, § 15; Laws, 1980, ch 493, § 17, eff from and after passage (approved May 13, 1980).

Cross References —

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 41-9-35. Injunction.

Notwithstanding the existence or pursuit of any other remedy, the licensing agency, may in the manner provided by law, upon the advice of the Attorney General who, except as otherwise authorized in Section 7-5-39, shall represent the licensing agency in the proceedings, maintain an action in the name of the state for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a hospital without a license as provided for in Section 41-9-11.

HISTORY:

Codes, 1942, § 7146.5-16; Laws, 1948, ch. 398, § 16; Laws, 2012, ch. 546, § 15, eff from and after July 1, 2012.

Cross References —

Injunctions, generally, see §§ 11-13-1 et seq.

Injunction against unlicensed practice of profession, see § 73-51-1.

§ 41-9-37. Paid educational leave for hospital employees.

(1)(a) A hospital may grant paid educational leave to those applicants it deems qualified therefor, upon such terms and conditions as it may impose and as provided for in this section.

(b) In order to be eligible for paid educational leave, an applicant must:

(i) Be working at the sponsoring hospital at the time of application;

(ii) Attend any college or school approved and designated by the sponsoring hospital; and

(iii) Agree to work in a health-care occupation as a licensed practical nurse, registered nurse, nurse practitioner, speech pathologist, occupational therapist, physical therapist or other health-care professional in the sponsoring hospital for a period of time equivalent to the period of time for which the applicant receives paid educational leave compensation, calculated to the nearest whole month, but in no event less than two (2) years.

(c)(i) Before being granted paid educational leave, each applicant shall enter into a contract with the sponsoring hospital agreeing to the terms and conditions upon which the paid educational leave shall be granted. The contract shall include such terms and provisions necessary to carry out the full purpose and intent of this section. The contract shall be signed by the administrator of the sponsoring hospital and the recipient of paid educational leave compensation. If the recipient is a minor, his or her minority disabilities shall be removed by a chancery court of competent jurisdiction before the contract is signed.

(ii) The sponsoring hospital shall have the authority to cancel any contract made between it and any recipient for paid educational leave upon such cause being deemed sufficient by the administrator of the hospital.

(iii) The sponsoring hospital is vested with full and complete authority and power to sue in its own name any recipient for any balance due to the hospital on any such uncompleted contract. The sponsoring hospital may contract with a collection agency or banking institution for collection of any balance due to the hospital from any recipient. The sponsoring hospital and its employees and, if applicable, its board of trustees are immune from any suit brought in law or equity for actions taken by the collection agency or banking institution incidental to or arising from their performance under the contract. The sponsoring hospital, collection agency and banking institution may negotiate for the payment of a sum that is less than full payment in order to satisfy any balance the recipient owes.

(iv) Failure to meet the terms of an educational loan contract shall be grounds for revocation of the professional license that was earned through the paid educational leave compensation granted under this section.

(v) A finding by the sponsoring hospital of a default by the recipient shall be a finding of unprofessional conduct and, therefore, a basis for the revocation of the professional license that was obtained through the educational leave program. A finding by the sponsoring hospital of default shall be a disciplinary action, not a collection action, and shall not be affected by the recipient declaring bankruptcy.

(vi) Notice of pending default status, the consequences of a default and the hearing to determine the pending default status shall be mailed by the sponsoring hospital to the recipient at the last known address.

(vii) The sponsoring hospital shall conduct a hearing of pending default status, make a final determination, and, if appropriate, issue a finding of default.

(viii) Recipients may appear at the hearing of pending default status, either personally or through counsel, or both, and produce and cross-examine witnesses or evidence in the recipient's behalf. The procedure of the hearing shall not be bound by the Mississippi Rules of Civil Procedure and Evidence.

(ix) If at the hearing a recipient is found to be in default, a copy of the finding of default shall be forwarded to the appropriate licensing agency.

(x) Appeals from a finding of default made by the sponsoring hospital shall be to the circuit court of the county in which the hospital is located.

(xi) Rules and regulations governing the hearing of pending default status and other applicable matters shall be promulgated by the sponsoring hospital.

(xii) Any person who is subject to the revocation of his or her professional license for not meeting the terms of an educational loan contract may appear before the appropriate licensing agency to show mitigating circumstances for failure to meet the terms of the contract, and may appeal any revocation of his or her professional license under the laws applicable to the licensing agency.

(xiii) A license that has been revoked under this section shall be reinstated upon a showing of proof that the recipient is no longer in default.

(xiv) These procedures shall only be applicable to educational leave contracts entered into under this section and shall not apply to educational leave contracts entered into with any state health institution pursuant to Section 37-101-291 or Section 37-101-293, as amended.

(2)(a) Any recipient who is granted paid educational leave by a hospital shall be compensated by the sponsoring hospital during the time the recipient is in school, at the rate of pay received by a nurse's aide employed at the hospital. All educational leave compensation received by the recipient while in school shall be considered earned conditioned upon the fulfillment of the terms and obligations of the educational leave contract and this section. However, no recipient of full-time educational leave shall accrue personal or major medical leave while the recipient is on paid educational leave. Recipients of paid educational leave shall be responsible for their individual costs of tuition and books.

(b) Paid educational leave shall be granted only upon the following conditions:

(i) The recipient shall fulfill his or her obligation under the contract with the sponsoring hospital by working as a licensed practical nurse, registered nurse, nurse practitioner, speech pathologist, occupational therapist, physical therapist or other health-care professional. The total compensation that the recipient was paid while on educational leave shall be considered as unconditionally earned on an annual pro rata basis for each year of service rendered under the educational leave contract as a health-care professional in the sponsoring hospital.

(ii) If the recipient does not work as a licensed practical nurse, registered nurse, nurse practitioner, speech pathologist, occupational therapist, physical therapist or other health-care professional in the sponsoring hospital for the period required under this section, the recipient shall be liable for repayment on demand of the remaining portion of the compensation that the recipient was paid while on paid educational leave that has not been unconditionally earned, with interest accruing at ten percent (10%) per annum from the recipient's date of graduation or the date that the recipient last worked at the sponsoring hospital, whichever is the later date. In addition, there shall be included in any contract for paid educational leave a provision for liquidated damages equal to Five Thousand Dollars ($5,000.00), which may be reduced on a pro rata basis for each year served under the contract.

(iii) If any recipient fails or withdraws from school at any time before successfully completing his or her health-care training, the recipient shall be liable for repayment on demand of the amount of the total compensation that the recipient was paid while on paid educational leave, with interest accruing at ten percent (10%) per annum from the date the recipient failed or withdrew from school. However, the recipient shall not be liable for liquidated damages, and if the recipient returns to work at the sponsoring hospital in the same position held at the hospital before accepting educational leave, or a position approved by the hospital, the recipient shall not be liable for payment of any interest on the amount owed.

(iv) The issuance and renewal of the professional license required to work as a licensed practical nurse, registered nurse, nurse practitioner, speech pathologist, occupational therapist, physical therapist or other health-care professional for which the educational leave was granted shall be contingent upon the repayment of the total compensation that the recipient received while on paid educational leave. Failure to meet the terms of an educational loan contract shall be grounds for revocation of the professional license that was earned through the paid educational leave compensation granted under this section. Any individual who receives any amount of paid educational leave compensation while in school and subsequently receives a professional license shall be deemed to have earned the professional license through paid educational leave. Any person who is subject to the revocation of his or her professional license for not meeting the terms of an educational loan contract may appear before the appropriate licensing agency to show mitigating circumstances for failure to meet the terms of the contract, and may appeal any revocation of his or her professional license under the laws applicable to the licensing agency.

(v) These procedures shall only apply to educational leave contracts entered into under this section and shall not apply to educational leave contracts entered into with any state institution pursuant to Section 37-101-291 or Section 37-101-293, as amended.

HISTORY:
Laws of 2003, ch. 487, § 1, eff from and after July 1, 2003.

Editor's Notes —
Laws, 2003, ch. 487, § 2 provides:

"SECTION 2. Section 1 of this act shall be codified in Chapter 9 of Title 41, Mississippi Code of 1972."

§ 41-9-39. Hospitals to offer influenza immunizations to all inpatients age sixty-five or older.

(1) Each year from October 1 through March 1 and in accordance with the latest recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, each hospital shall offer, prior to discharge, immunizations against influenza virus to all inpatients sixty-five (65) years of age and older unless contraindicated and contingent upon the availability of the vaccine.

(2) Any hospital, or employee thereof, shall be immune from civil liability for any personal injury as a result of complying or not complying with the requirements of subsection (1) if the hospital or employee's action or failure to act do not amount to willful or wanton misconduct or gross negligence.

HISTORY:
Laws, 2014, ch. 433, § 5, eff from and after July 1, 2014.

REIMBURSEMENT FOR TRAUMA CARE SERVICE

Sec.
41-9-51. Hospitals authorized to charge patient for reasonable cost of activating trauma care services under certain circumstances; reimbursement by health-care insurer.

§ 41-9-51. Hospitals authorized to charge patient for reasonable cost of activating trauma care services under certain circumstances; reimbursement by health-care insurer.

Any hospital that reasonably activates a trauma care team in response to a request for trauma care services may charge the patient for the reasonable cost of activating those services and shall be reimbursed for those services by the health care insurer by assignment from the patient or from the patient. That cost shall be reimbursed regardless of whether services were actually rendered to the patient, and those trauma care services shall be deemed as a matter of law to have been medical services provided to the patient.

HISTORY:
Laws, 2008, ch. 549, § 8; reenacted without change, Laws, 2011, ch. 545, § 1, eff from and after July 1, 2011.

Editor's Notes —

Laws of 2011, ch. 545, § 8, effective July 1, 2011, amended Laws of 2008, ch. 549, § 9, to extend the date of the repealer for this section from July 1, 2011, until July 1, 2014. Subsequently, Laws of 2011, ch. 531, § 2, effective July 2, 2011, repealed Laws of 2008, ch. 549, § 9, to delete the repealer for this section.

HOSPITAL RECORDS — PREPARATION, PRESERVATION AND DESTRUCTION

Sec.

41-9-61. Definitions.
41-9-63. Hospitals required to prepare and maintain hospital records.
41-9-64. Electronic medical records containing electronic signature deemed signed.
41-9-65. Hospital records constitute hospital property subject to reasonable access.
41-9-67. Hospital records not public records; privileged communications rule not impaired.
41-9-68. Certain hospital records exempt from requirement of public access.
41-9-69. Period of retention of hospital records.
41-9-71. Early retirement of hospital records on consent of patient and physician.
41-9-73. Retention of hospital records for longer periods.
41-9-75. Abstracts of hospital records; destruction of originals.
41-9-77. Reproduction of hospital records.
41-9-79. Disposition of hospital records on closing of hospital.
41-9-81. Business records of hospitals.
41-9-83. Violations; civil liability.

§ 41-9-61. Definitions.

As used in Sections 41-9-61 through 41-9-83:

(a) "Hospital" shall have the meaning ascribed thereto by Section 41-9-3, regardless of the type of ownership or form of management or organization of the institution, and it shall include the proprietor and operator thereof.

(b) "Hospital records" shall mean, without restriction, those medical histories, records, reports, summaries, diagnoses and prognoses, records of treatment and medication ordered and given, notes, entries, X-rays and other written or graphic data prepared, kept, made or maintained in hospitals that pertain to hospital confinements or hospital services rendered to patients admitted to hospitals or receiving emergency room or outpatient care. Such records shall also include abstracts of the foregoing data customarily made or made as provided in Section 41-9-75. Such records shall not, however, include ordinary business records pertaining to patients' accounts or the administration of the institution nor shall "hospital records" include any records consisting of nursing audits, physician audits, departmental evaluations or other evaluations or reviews which are used only for in-service education programs, or which are required only for accreditation or for participation in federal health programs.

(c) "Patient" shall mean outpatients, inpatients, persons dead on arrival, and the newborn.

(d) "Retirement," or variations thereof, shall mean the withdrawal from current files of hospital records, business records or parts thereof on or after the expiration of the applicable minimum period of retention established pursuant to Section 41-9-69. However, no hospital record, business record, or parts thereof, shall be subject to retirement where otherwise required by law to be kept as a permanent record.

(e) "Licensing agency" shall mean the State Department of Health.

(f) "Business records" shall mean all those books, ledgers, records, papers and other documents prepared, kept, made or received in hospitals that pertain to the organization, administration or management of the business and affairs of hospitals, but which do not constitute hospital records as hereinabove defined.

HISTORY:
Codes, 1942, § 7146-51; Laws, 1962, ch. 411, § 1; Laws, 1975, ch. 353; Laws, 1980, ch. 493, § 18; Laws, 1986, ch. 437, § 20, eff from and after July 1, 1986.

Cross References —
Limitations on charges permitted for photocopying patients' records by medical provider; physicians to make reasonable charges for depositions, see § 11-1-52.

Health care commission, see §§ 41-7-171 et seq.

Licensing agency for hospitals, see § 41-9-3.

Business records of hospitals, see § 41-9-81.

Use of hospital records in trials and administrative hearings, see §§ 41-9-101 et seq.

Evaluation and review of professional health services providers, see §§ 41-63-1 et seq.

RESEARCH REFERENCES

ALR.
Admissibility of hospital record relating to intoxication or sobriety of patient. 38 A.L.R.2d 778.

Admissibility of hospital record relating to cause or circumstances of accident or incident in which patient sustained injury. 44 A.L.R.2d 553.

Admissibility of hospital record relating to physician's opinion as to whether patient is malingering or feigning injury. 55 A.L.R.2d 1031.

Admissibility in civil action of electroencephalogram, electrocardiogram, or other record made by instrument used in medical test, or of report based upon such test. 66 A.L.R.2d 536.

Discovery of hospital's internal records or communications as to qualifications or evaluations of individual physician. 81 A.L.R.3d 944.

§ 41-9-63. Hospitals required to prepare and maintain hospital records.

All hospitals, their officers or employees and medical and nursing personnel practicing therein, shall with reasonable promptness prepare, make and maintain true and accurate hospital records complying with such methods and minimum standards as may be prescribed from time to time by rules and regulations adopted by the licensing agency.

HISTORY:
Codes, 1942, § 7146-52; Laws, 1962, ch. 411, § 2, eff 60 days from and after passage (approved March 28, 1962).

JUDICIAL DECISIONS

1. Preference card.
Probative value of the doctor's preference card, had it been produced, would have been to establish that the doctor in fact specified the anti-embolic stockings, or that he did not; however, the trial court found that the stockings had not been used in the mother's surgery; therefore, the son met his burden of proof to show that the stockings were not used and was unharmed by the absence of the preference

card. Young v. Univ. of Miss. Med. Ctr., 914 So. 2d 1272, 2005 Miss. App. LEXIS 904 (Miss. Ct. App. 2005).

§ 41-9-64. Electronic medical records containing electronic signature deemed signed.

An electronic medical record or medical order containing an electronic signature is considered to be signed as a matter of law, if the electronic signature is affixed or verified in conformity with a reasonable security procedure for the purpose of verification of electronic signatures.

HISTORY:

Laws, 2000, ch. 441, § 1, eff from and after passage (approved Apr. 18, 2000).

§ 41-9-65. Hospital records constitute hospital property subject to reasonable access.

(1) Hospital records are and shall remain the property of the various hospitals, subject however to reasonable access to the information contained in the records upon good cause shown by the patient, his personal representatives or heirs, his attending medical personnel and his duly authorized nominees, and upon payment of any reasonable charges for that service. Nothing in this section shall be construed to deny access to hospital records by representatives and officials of the State Department of Health, in the discharge of their official duties, under Sections 41-3-15, 41-23-1 and 41-23-2.

(2) Nothing in this section shall be construed to prevent an heir from obtaining access to a decedent's medical records under Section 41-10-3.

HISTORY:

Codes, 1942, § 7146-53; Laws, 1962, ch. 411, § 3; Laws, 1988, ch. 557, § 4; Laws, 2009, ch. 524, § 2, eff from and after July 1, 2009.

Cross References —

Limitations on charges permitted for photocopying patients' records by medical provider; physicians to make reasonable charges for depositions, see § 11-1-52.

Exemption of certain hospital records from requirement of public access, see § 41-9-68.

JUDICIAL DECISIONS

1. In general.

Trial court did not err by granting the corporations summary judgment on the issue of standing in the law firm's anti-trust lawsuit, as the law firm's clients only had standing to object to any fees associated with retrieval of their medical records under Miss. Code Ann. § 41-9-65, and the law firm was not a real party in interest under Miss. R. Civ. P. 17(a). Owen & Galloway, L.L.C. v. Smart Corp., 913 So. 2d 174, 2005 Miss. LEXIS 836 (Miss. 2005).

In light of the highly personal nature of a patient's medical and hospital records and of the problems that could result from their improper release, a hospital properly refused to reproduce and release voluminous patient records when it received only a form request and offer to pay for "reasonable access"; a reasonable response would be to allow access if representatives of the requesting facility appeared personally at the hospital, checked the records, and indicated those for which they would be willing to pay for copies. Young v. Madison General Hospital, 337 So. 2d 931, 1976 Miss. LEXIS 1600 (Miss. 1976).

RESEARCH REFERENCES

ALR.

Discovery of hospital's internal records or communications as to qualifications or evaluations of individual physician. 81 A.L.R.3d 944.

§ 41-9-67. Hospital records not public records; privileged communications rule not impaired.

Except as otherwise provided by law, hospital records shall not constitute public records, and nothing contained in Sections 41-9-61 through 41-9-83 shall be deemed to impair any privilege of confidence conferred by law or the Mississippi Rules of Evidence on patients, their personal representatives or heirs, by Section 13-1-21, Mississippi Code of 1972.

HISTORY:

Codes, 1942, § 7146-59; Laws, 1962, ch. 411, § 9; Laws, 1991, ch. 573, § 109, eff from and after August 14, 1991 (the date the United States Attorney General stated that this amendment was not subject to preclearance under the Voting Rights Act).

Editor's Notes —

The United States Attorney General, by letter dated August 14, 1991, stated that the amendment to § 41-9-67 by Laws of 1991, ch. 573, § 109, is not a change which affects voting, and therefore, is not subject to Section 5 preclearance under the Voting Rights Act of 1965.

Cross References —

Exemption of certain hospital records from requirement of public access, see § 41-9-68.

Confidentiality and inspection of hospital records of civilly committed patients, see § 41-21-97.

JUDICIAL DECISIONS

1. In general.

In light of the highly personal nature of the patient's medical and hospital records and of the problems that could result from their improper release, a hospital properly refused to reproduce and release voluminous patient records when it received only a form request and offer to pay for "reasonable access"; a reasonable response would be to allow access if representatives of the requesting facility appeared personally at the hospital, checked the records, and indicated those for which they would be willing to pay for copies. Young v. Madison General Hospital, 337 So. 2d 931, 1976 Miss. LEXIS 1600 (Miss. 1976).

An injured automobile passenger waived his patient-doctor privilege as to communication and hospital records when he put on the stand a doctor who was in possession of the records which he had secured for use in connection with his testimony, and the doctor's testimony indicated that the record was used by him on the witness stand. Knighton v. Knighton, 253 So. 2d 846, 1971 Miss. LEXIS 1234 (Miss. 1971).

RESEARCH REFERENCES

Am. Jur.

22 Am. Jur. Proof of Facts 2d 1, Medical Malpractice – Use of Hospital Records.

38 Am. Jur. Proof of Facts 2d 145, Foundation for Admissibility of Hospital Records and X-rays.

36 Am. Jur. Trials 695, Obtaining, Organizing and Abstracting Medical Records for Use in a Lawsuit.

§ 41-9-68. Certain hospital records exempt from requirement of public access.

(1) Except as otherwise provided in subsection (2) of this section, records maintained by public hospitals shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

(2) The following records of public hospitals shall not be exempt from the Mississippi Public Records Act of 1983:

(a) The official minutes of the board of trustees of a public hospital;

(b) Financial reports not otherwise exempt that are required by state or federal statute or regulation to be filed with the owner of the public hospital or with any other agency of state or federal government; and

(c) Any other record maintained by a public hospital that does not fall within the definition of the term "hospital records" as that term is defined in Section 41-9-61, except for the following records, which shall be exempt:

(i) Records directly relating to the terms of any potential or current employment or services agreement with any physicians or other employees of a public hospital, including any application for medical staff privileges or membership with a public hospital;

(ii) Records directly relating to the credentialing, health, performance, salary, raises or disciplinary action of any employee or medical staff member or applicant for medical staff privileges at a public hospital;

(iii) Records directly relating to prospective strategic business decisions of a public hospital, including without limitation, decisions to open a new service line, implement capital improvements, or file applications for certificates of need or determinations of nonreviewability with the State Department of Health; and

(iv) Records directly relating to individual patient billing and collection information.

HISTORY:

Laws, 1983, ch. 424, § 18; Laws, 2015, ch. 484, § 8, eff from and after Jan. 1, 2016.

Editor's Notes —

The Mississippi Public Records Act of 1983, referred to in this section, is Laws of 1983, ch. 424, §§ 1-9, which appears as §§ 25-61-1 et seq.

Cross References —

Provision that the board of trustees of a community hospital shall comply with this section, see § 41-13-35.

Confidentiality and inspection of hospital records of civilly committed patients, see § 41-21-97.

OPINIONS OF THE ATTORNEY GENERAL

Whether county emergency medical service records, including health conditions of persons injured in an accident, constituted exempt "hospital records" under Section 41-9-68 or were otherwise privileged under Section 13-1-21 is a factual question. 2005 Miss. Op. Att'y Gen. 595.

§ 41-9-69. Period of retention of hospital records.

(1) Hospital records shall be retained, preserved and properly stored by hospitals for such periods of reasonable duration as may be prescribed in rules and regulations adopted by the licensing agency. Such rules and regulations may provide for different periods of such retention for the various constituent parts of any hospital records, and such rules and regulations may require that an abstract be made of pertinent data from any hospital records that may be retired as provided herein. Such rules and regulations may also provide for different periods of such retention for the various injuries, diseases, infirmities

or conditions primarily causing or associated with the hospitalization. However, complete hospital records shall be retained for a period after discharge of the patient of at least (a) seven (7) years in cases of patients discharged at death, except as may be otherwise hereinafter provided; (b) ten (10) years in cases of adult patients of sound mind at the time of discharge, except as may be otherwise hereinafter provided; (c) for the period of minority or other known disability of the patient plus seven (7) additional years, but not to exceed twenty-eight (28) years, in cases of patients under disability of minority or otherwise; or (d) for the period of minority or other known disability of any survivors hereinafter mentioned plus seven (7) additional years, but not to exceed twenty-eight (28) years, in all cases where the patient was discharged at death, or is known by the hospital to have died within thirty (30) days after discharge, and the hospital knows or has reason to believe that such patient or former patient left one or more survivors under disability of minority or otherwise who are or are claimed to be entitled to damages for wrongful death of the patient under Section 11-7-13, or laws amendatory thereof. Upon the expiration of the applicable period of retention, any hospital may retire the hospital record.

(2) X-ray film and any other graphic data may be retired four (4) years after the date of exposure of the X-ray film or creation of the graphic data if the written and signed findings of a radiologist who has read such X-ray film or other professional who has interpreted such graphic data are retained for the same period as other hospital records under the preceding subsection. However, before X-ray film or graphic data is retired, the signature of the patient or his representative consenting to the retirement of X-rays or graphic data shall be on file, or the hospital, by certified letter, return receipt requested, shall advise the patient or his representative of its intent to retire the X-ray film or graphic data. The letter shall be mailed to the last known address of the patient or the patient's representative as reflected in the hospital's records. The patient or his representative shall have sixty (60) days from the date of the hospital's letter to request in writing that the X-ray film or graphic data be maintained by the hospital for the same period as hospital records under the preceding subsection. If such request is received by the hospital within sixty (60) days from the date of its letter, the hospital shall abide by such request. Otherwise, the hospital may retire such X-ray film or graphic data as it chooses.

HISTORY:

Codes, 1942, § 7146-54; Laws, 1962, ch. 411, § 4; Laws, 1973, ch. 301, § 1; Laws, 1981, ch. 450, § 1; Laws, 1990, ch. 369, § 1; Laws, 1991, ch. 380, § 1, eff from and after July 1, 1991.

Cross References —

Early retirement of records with consent of patient and physician, see § 41-9-71.

Extension of period of retention of records, see § 41-9-73.

OPINIONS OF THE ATTORNEY GENERAL

Because in-house treatment is provided by some regional health centers, such centers must fulfill statutory record retention requirements dealing with hospital records. 1992 Miss. Op. Att'y Gen. 257.

Section 41-9-69 does not regulate the retention of records by county health departments. Section 25-59-21 would govern the retention and destruction of these records. 1995 Miss. Op. Att'y Gen. 674.

§ 41-9-71. Early retirement of hospital records on consent of patient and physician.

Any hospital may, in its discretion, retire any hospital record or part thereof prior to the expiration of the period of retention established in Section 41-9-69 upon the written consent of the patient involved, if he be an adult and of sound mind, and the consent of the attending physician, if he be alive. If the attending physician be not alive, such records or part thereof may be so retired upon the written consent of such patient. However, in no event shall any consent be valid if given within one (1) year from the date of discharge.

HISTORY:
Codes, 1942, § 7146-55; Laws, 1962, ch. 411, § 5, eff 60 days from and after passage (approved March 28, 1962).

Cross References —
Period of retention of records, see § 41-9-69.

§ 41-9-73. Retention of hospital records for longer periods.

Any hospital may retain, preserve and store hospital records for such longer periods as in its discretion it may find proper or as may be required by any court of competent jurisdiction.

HISTORY:
Codes, 1942, § 7146-56; Laws, 1962, ch. 411, § 6, eff 60 days from and after passage (approved March 28, 1962).

Cross References —
Period of retention of records, see § 41-9-69.

§ 41-9-75. Abstracts of hospital records; destruction of originals.

Upon retirement of any hospital record or part thereof, the hospital shall cause an abstract to be made of any pertinent data where so required by the rules and regulations of the licensing agency, or as the hospital in its discretion may find proper. The hospital record or part thereof so retired shall be destroyed or otherwise disposed of by burning, shredding or other effective method in keeping with the confidential nature of its contents.

HISTORY:
Codes, 1942, § 7146-57; Laws, 1962, ch. 411, § 7; Laws, 1981, ch. 450, § 2, eff from and after July 1, 1981.

§ 41-9-77. Reproduction of hospital records.

Any hospital may, in its discretion, cause any hospital record or part thereof to be reproduced on film or in any other acceptable form of medium, as determined by the licensing agency, which shall include, but not be limited to, microfilming, photographing, photostating, storage on optical disks, or any other form of electronic or digital media. After the records have been reproduced, the hospital may retire the original documents so reproduced. Any such reproduction or copy of an original hospital record or part thereof shall be deemed to be the original hospital record or part thereof for all purposes, shall be subject to retention and retirement as provided in Sections 41-9-69 through 41-9-73, and shall be admissible as evidence in all courts or administrative agencies to the same extent as the original would be or would have been admissible. A facsimile, exemplification or copy of the reproduction or copy shall be deemed to be a transcript, exemplification or copy of the original hospital record or part thereof. However, no state hospital shall undertake that reproduction or destruction of records except as provided in Section 25-59-1 et seq. No other public hospital shall undertake that reproduction unless the expense for it has been provided for in the annual budget, or an amendment to the budget, approved for that public hospital.

HISTORY:

Codes, 1942, § 7146-58; Laws, 1962, ch. 411, § 8; Laws, 1991, ch. 446, § 1; Laws, 2009, ch. 325, § 1; Laws, 2009, ch. 407, § 1, eff from and after July 1, 2009.

Joint Legislative Committee Note —

Section 1 of ch. 407, Laws of 2009, effective from and after July 1 , 2009 (approved March 18, 2009), amended this section. Section 1 of ch. 325, Laws of 2009, effective from and after July 1, 2009 (approved March 11, 2009), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 407, Laws of 2009, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Cross References —

Exemption of certain hospital records from requirement of public access, see § 41-9-68.

Disposition of records on closing of hospital, see § 41-9-79.

Reproduction of business records, see § 41-9-81.

RESEARCH REFERENCES

ALR.

Admissibility of hospital record relating to intoxication or sobriety of patient. 38 A.L.R.2d 778.

Admissibility of hospital record relating to cause or circumstances of accident or incident in which patient sustained injury. 44 A.L.R.2d 553.

Admissibility of hospital record relating to physician's opinion as to whether patient is malingering or feigning injury. 55 A.L.R.2d 1031.

Admissibility in civil action of electroencephalogram, electrocardiogram, or other record made by instrument used in medical test, or of report based upon such test. 66 A.L.R.2d 536.

Photographic representation or photostat of writing as primary or secondary evidence within best evidence rule. 76 A.L.R.2d 1356.

§ 41-9-79. Disposition of hospital records on closing of hospital.

If any hospital shall be finally closed, its hospital records may be delivered and turned over to any other hospital or hospitals in the vicinity willing to accept and retain the same as provided for in Section 41-9-69. If there be no such other hospital, the closing hospital shall deliver its hospital records, in good order and properly indexed for convenient reference, to the licensing agency, which shall store, retain, retire and provide access to the information therein in the same manner as is provided for by hospitals. In its discretion, the licensing agency may also exercise like authority, and to the same effect, with respect to reproduction of such hospital records as is conferred on state hospitals by Section 41-9-77.

HISTORY:
Codes, 1942, § 7146-60; Laws, 1962, ch. 411, § 10, eff 60 days from and after passage (approved March 28, 1962).

§ 41-9-81. Business records of hospitals.

The commissioners or board of trustees of any hospital owned or owned and operated separately or jointly by one or more counties, cities, towns, supervisors districts or election districts, or combinations thereof, shall have the power and authority, in its discretion, to retire and destroy any of the following business records of the hospital at any time three (3) years after the respective dates that the same are prepared, made, received, executed, acted on or otherwise completed: intrahospital requisitions; inventory records of expendable supplies; temporary records pertaining to patients' charges; department reports; paid invoices; purchase orders; and similar documents of temporary use and value.

In addition to the foregoing, whenever any business records which are required by law to be preserved and retained for indefinite periods, or which are necessary or desirable on the basis of sound business practices to be preserved or retained, shall have been so retained and preserved for a period of six (6) years, the commissioners or board of trustees of any such hospital shall have the power and authority, in its discretion, to retire and destroy the same. However, nothing contained herein shall authorize the retirement, destruction or disposal of any business records containing or consisting of minutes or minute books; bylaws or rules and regulations; general ledgers; disbursement registers or journals; cash receipts registers; maintenance and investment accounts; inventory records; ledger cards, sheets or other records of unpaid accounts receivable; other evidence of unpaid indebtedness; budgets; audit reports; licenses or permits; abstracts or certificates of title; geological reports; engineering or architectural plans, specifications or drawings; or any other business records which are otherwise required by law, order or decree of any court of competent jurisdiction, applicable rules and regulations or sound business practices to be retained permanently or for longer periods than six (6) years.

Except as otherwise provided by law, order or decree of any court of competent jurisdiction, or applicable rules and regulations, any privately owned and operated hospital may retire any business records at such times as in its judgment may conform to sound business practices and the reasonable accommodation of other interested parties.

Any hospital may, in its discretion, and at any time, cause any part of its business records to be reproduced in like manner and with like effect as provided in Section 41-9-77 with respect to hospital records. However, this shall not be construed to permit the destruction, retirement or earlier retirement of any business record which is otherwise prohibited or deferred by this section.

HISTORY:
Codes, 1942, § 7146-61; Laws, 1962, ch. 411, § 11; Laws, 1966, ch. 462, § 1; Laws, 1991, ch. 446, § 2, eff from and after July 1, 1991.

Cross References —

Reproduction of hospital records, see § 41-9-77.

§ 41-9-83. Violations; civil liability.

Willful violation of the provisions of Sections 41-9-61 through 41-9-83 shall constitute a misdemeanor and shall be punishable as provided for by law. No hospital, its officers, employees or medical and nursing personnel practicing therein, shall be civilly liable for violation of said sections except to the extent of liability for actual damages in a civil action for willful or reckless and wanton acts or omissions constituting such violation. Such liability shall be subject, however, to any immunities or limitations of liability or damages provided by law.

HISTORY:

Codes, 1942, § 7146-62; Laws, 1962, ch. 411, § 12, eff 60 days from and after passage (approved March 28, 1962).

Cross References —

Penalty where none fixed elsewhere by statute, see § 99-19-31.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violations, see § 99-19-73.

RESEARCH REFERENCES

ALR.

Locality rule as governing hospital's standard of care to patient and expert's competency to testify thereto. 36 A.L.R.3d 440.

HOSPITAL RECORDS — USE IN TRIALS AND ADMINISTRATIVE HEARINGS

Sec.
41-9-101. Definitions.
41-9-103. Furnishing copies of records in compliance with subpoenas.
41-9-105. Sealing, identification and direction of copies.
41-9-107. Opening of sealed envelopes.
41-9-109. Affidavit of custodian as to copies; charges.
41-9-111. Repealed.
41-9-113. Obtaining personal attendance of custodian.
41-9-115. Obtaining personal attendance of custodian and production of original record.
41-9-117. Substitution of copies after introduction of records into evidence.
41-9-119. Evidence of reasonableness of medical expenses.

§ 41-9-101. Definitions.

As used in Sections 41-9-101 through 41-9-119, the following terms shall have the respective meanings ascribed to them:

(a) "Records" shall mean and include "hospital records" as defined in Section 41-9-61; however, a subpoena duces tecum for records shall not be deemed to include X-rays, electrocardiograms and like graphic matter unless specifically referred to in the subpoena; and

(b) "Custodian" shall mean and include the health information administrator or registered health information technician and the administrator or other chief officer of a duly licensed hospital in this state and its proprietor, as well as their deputies and assistants, and any other persons who are official custodians or depositories of records. The custodian shall abide, in all respects, to the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), notwithstanding any other state statute.

HISTORY:

Codes, 1942, § 7146.3-01; Laws, 1971, ch. 375, § 1; Laws, 2005, ch. 342, § 1, eff from and after July 1, 2005.

Cross References —

Regulation of hospitals, see §§ 41-9-1 et seq.

Preparation, preservation and disposition of hospital records, see §§ 41-9-61 et seq.

Evaluation and review of professional health services providers, see §§ 41-63-1 et seq.

Federal Aspects—

Federal Health Insurance Portability and Accountability Act of 1996, see 42 USCS §§ 1320d et seq.

JUDICIAL DECISIONS

1. In general.

The privileged communications statute does not preclude testimony from and concerning a patient's hospital records, by doctors who had never seen or examined the patient. Reynolds v. West, 237 Miss. 613, 115 So. 2d 742, 1959 Miss. LEXIS 511 (Miss. 1959).

RESEARCH REFERENCES

ALR.

Admissibility under business entry statutes of hospital records in criminal cases. 69 A.L.R.3d 22.

Admissibility under Uniform Business Records as Evidence Act or similar statute of medical report made by consulting physician to treating physician. 69 A.L.R.3d 104.

Am. Jur.

5 Am. Jur. Pl & Pr Forms (Rev), Captions, Prayers, and Formal Parts, Form 779 (for discovery – clause – oral and physical examination of plaintiff – for examination of hospital records).

6 Am. Jur. Proof of Facts, Hospital Records, Proof No. 2 (foundation for admission of records required by statute to be kept).

22 Am. Jur. Proof of Facts 2d 1, Medical Malpractice – Use of Hospital Records.

38 Am. Jur. Proof of Facts 2d 145, Foundation for Admissibility of Hospital Records and X-rays.

5 Am. Jur. Trials, Introducing and Marking Exhibits, §§ 21, 22.

6 Am. Jur. Trials, Basis of Medical Testimony, § 29.

15 Am. Jur. Trials, Discovery and Evaluation of Medical Records, §§ 1 et seq.

36 Am. Jur. Trials 695, Obtaining, Organizing and Abstracting Medical Records for Use in a Lawsuit.

Practice References.

Young, Trial Handbook for Mississippi Lawyers § 24:16.

§ 41-9-103. Furnishing copies of records in compliance with subpoenas.

Except as hereinafter provided, when a subpoena duces tecum is served upon a custodian of records of any hospital duly licensed under the laws of this state in an action or proceeding in which the hospital is neither a party nor the place where any cause of action is alleged to have arisen and such subpoena requires the production of all or any part of the records of the hospital relating to the care or treatment of a patient in such hospital, it shall be sufficient compliance therewith if the custodian or other officer of the hospital shall, on or before the time specified in the subpoena duces tecum, file with the court clerk or the officer, body or tribunal conducting the hearing, a true and correct copy (which may be a copy reproduced on film or other reproducing material by microfilming, photographing, photostating or other approximate process, or a facsimile, exemplification or copy of such reproduction or copy) of all records described in such subpoena.

HISTORY:

Codes, 1942, § 7146.3-02; Laws, 1971, ch. 375, § 2, eff from and after passage (approved March 16, 1971).

Cross References —

Subpoena duces tecum, see § 11-1-51.

Licensing of hospitals, see § 41-9-11.

Reproductions and copies of hospital records, see § 41-9-77.

Affidavit of custodian, see § 41-9-109.

JUDICIAL DECISIONS

1. In general.

The procedure for the acquisition, identification and admission of hospital records is set forth in Code 1942, §§ 7146.3-02 to 7146.3-08. Jolly v. State, 269 So. 2d 650, 1972 Miss. LEXIS 1232 (Miss. 1972).

Although the defendant, charged with manslaughter, procured the issuance of a subpoena duces tecum to custodian of records of the University of Mississippi Medical Center Hospital as required by Code 1942, § 7146.3-02, where the affidavit setting forth the various criteria contained in Code 1942, § 7126.3-05 was not supplied and the defendant failed to state for what purpose the introduction of these records would serve, or otherwise establish their relevance, they were properly excluded as evidence by the trial court. Jolly v. State, 269 So. 2d 650, 1972 Miss. LEXIS 1232 (Miss. 1972).

The privileged communications statute does not preclude testimony from and concerning a patient's hospital records, by doctors who had never seen or examined the patient. Reynolds v. West, 237 Miss. 613, 115 So. 2d 742, 1959 Miss. LEXIS 511 (Miss. 1959).

RESEARCH REFERENCES

ALR.

Admissibility under state law of hospital record relating to intoxication or sobriety of patient. 80 A.L.R.3d 456.

Medical malpractice: presumption or inference from failure of hospital or doctor to produce relevant medical records. 69 A.L.R.4th 906.

Am. Jur.

22 Am. Jur. Proof of Facts 2d 1, Medical Malpractice – Use of Hospital Records.

38 Am. Jur. Proof of Facts 2d 145, Foundation for Admissibility of Hospital Records and X-rays.

36 Am. Jur. Trials 695, Obtaining, Organizing and Abstracting Medical Records for Use in a Lawsuit.

§ 41-9-105. Sealing, identification and direction of copies.

The copy of the records shall be separately enclosed in an inner-envelope or wrapper, sealed, with the title and number of the action, name of witness and date of subpoena clearly inscribed thereon. The sealed envelope or wrapper shall then be enclosed in an outer-envelope or wrapper, sealed, and directed as follows:

If the subpoena directs attendance in court, to the clerk of such court or to the judge thereof; if the subpoena directs attendance at a deposition, to the officer before whom the deposition is to be taken, at the place designated in the subpoena for the taking of the deposition or at his place of business; in other cases, to the officer, body or tribunal conducting the hearing, at a like address.

HISTORY:

Codes, 1942, § 1746.3-03; Laws, 1971, ch. 375, § 3, eff from and after passage (approved March 16, 1971).

Cross References —

Accompanying affidavit of custodian, see § 41-9-109.

JUDICIAL DECISIONS

1. In general.

The procedure for the acquisition, identification and admission of hospital records is set forth in Code 1942, §§ 7146.3-02 to 7146.3-08. Jolly v. State, 269 So. 2d 650, 1972 Miss. LEXIS 1232 (Miss. 1972).

RESEARCH REFERENCES

Am. Jur.

22 Am. Jur. Proof of Facts 2d 1, Medical Malpractice – Use of Hospital Records.

38 Am. Jur. Proof of Facts 2d 145, Foundation for Admissibility of Hospital Records and X-rays.

36 Am. Jur. Trials 695, Obtaining, Organizing and Abstracting Medical Records for Use in a Lawsuit.

§ 41-9-107. Opening of sealed envelopes.

Unless the sealed envelope or wrapper is returned to a witness who is to appear personally, the copy of the records shall remain sealed and shall be opened only at the time of trial, deposition, or other hearing, upon the direction of the judge, court, officer, body, or tribunal conducting the proceeding, in the presence of all parties who have appeared in person or by counsel at such trial, deposition or hearing. Before directing that such inner-envelope or wrapper be opened, the judge, court, officer, body, or tribunal shall first ascertain that either (1) the records have been subpoenaed at the instance of the patient involved or his counsel of record, or (2) the patient involved or someone authorized in his behalf to do so for him has consented thereto and waived any privilege of confidence involved. Records which are not introduced in evidence or required as part of the record shall be returned to the person or entity from whom received.

The provisions of this section shall not apply in (a) a Workers' Compensation proceeding if the pertinent record is the record of the claimant therein or a claimant's decedent; or (b) physician or podiatrist disciplinary proceedings pursuant to Sections 73-25-1 through 73-25-39, 73-25-51 through 73-25-67, 73-25-81 through 73-25-95 or 73-27-1 through 73-27-19, Mississippi Code of 1972.

HISTORY:

Codes, 1942, §§ 7146.3-04, 7146.3-09; Laws, 1971, ch. 375, §§ 4, 9; Laws, 1987, ch. 500, § 3, eff from and after July 1, 1987.

Cross References —

Privileged communications, see § 13-1-21.

Admissibility of copies of hospital records, see § 41-9-77.

Confidentiality and inspection of hospital records of civilly committed patients, see § 41-21-97.

JUDICIAL DECISIONS

1. In general.

The procedure for the acquisition, identification and admission of hospital records is set forth in Code 1942, §§ 7146.3-02 to 7146.3-08. Jolly v. State, 269 So. 2d 650, 1972 Miss. LEXIS 1232 (Miss. 1972).

RESEARCH REFERENCES

Am. Jur.

22 Am. Jur. Proof of Facts 2d 1, Medical Malpractice – Use of Hospital Records.

38 Am. Jur. Proof of Facts 2d 145, Foundation for Admissibility of Hospital Records and X-rays.

36 Am. Jur. Trials 695, Obtaining, Organizing and Abstracting Medical Records for Use in a Lawsuit.

§ 41-9-109. Affidavit of custodian as to copies; charges.

The records shall be accompanied by an affidavit of a custodian stating in substance: (a) that the affiant is a duly authorized custodian of the records and has authority to certify said records, (b) that the copy is a true copy of all the records described in the subpoena, (c) that the records were prepared by the personnel of the hospital, staff physicians, or persons acting under the control of either, in the ordinary course of hospital business at or near the time of the act, condition or event reported therein, and (d) certifying the amount of the reasonable charges of the hospital for furnishing such copies of the record. If the hospital has none of the records described, or only part thereof, the custodian shall so state in the affidavit and file the affidavit and such records as are available in the manner described in Sections 41-9-103, 41-9-105. The filing of such affidavit with respect to reasonable charges shall be sufficient proof of such expense, which shall be taxed as costs of court.

HISTORY:

Codes, 1942, § 7146.3-05; Laws, 1971, ch. 375, § 5, eff from and after passage (approved March 16, 1971).

JUDICIAL DECISIONS

1. In general.

The procedure for the acquisition, identification and admission of hospital records is set forth in Code 1942, §§ 7146.3-02 to 7146.3-08. Jolly v. State, 269 So. 2d 650, 1972 Miss. LEXIS 1232 (Miss. 1972).

Although the defendant, charged with manslaughter, procured the issuance of a subpoena duces tecum to custodian of records of the University of Mississippi Medical Center Hospital as required by Code 1942, § 7146.3-02, where the affidavit setting forth the various criteria contained in Code 1942, § 7126.3-05 was not supplied and the defendant failed to state for what purpose the introduction of these records would serve, or otherwise establish their relevance, they were properly excluded as evidence by the trial court. Jolly v. State, 269 So. 2d 650, 1972 Miss. LEXIS 1232 (Miss. 1972).

RESEARCH REFERENCES

Am. Jur.

22 Am. Jur. Proof of Facts 2d 1, Medical Malpractice – Use of Hospital Records.

38 Am. Jur. Proof of Facts 2d 145, Foundation for Admissibility of Hospital Records and X-rays.

36 Am. Jur. Trials 695, Obtaining, Organizing and Abstracting Medical Records for Use in

a Lawsuit.

§ 41-9-111. Repealed.

Repealed by Laws, 1991, ch. 573, § 141, eff from and after July 1, 1991. [Codes, 1942, § 7146.3-06; Laws, 1971, ch. 375, § 6]

Editor's Notes —
Former § 41-9-111 pertained to the admissibility of copies and affidavits.

§ 41-9-113. Obtaining personal attendance of custodian.

The personal attendance of the custodian shall be required if the subpoena duces tecum contains a clause which reads:

"The procedure authorized pursuant to Section 41-9-103 will not be deemed sufficient compliance with this subpoena."

HISTORY:
Codes, 1942, § 7146.3-07; Laws, 1971, ch. 375, § 7, eff from and after passage (approved March 16, 1971).

Cross References —
Subpoena duces tecum, see § 11-1-51.

JUDICIAL DECISIONS

1. In general.
The procedure for the acquisition, identification and admission of hospital records is set forth in Code 1942, §§ 7146.3-02 to 7146.3-08. Jolly v. State, 269 So. 2d 650, 1972 Miss. LEXIS 1232 (Miss. 1972).

RESEARCH REFERENCES

Am. Jur.
22 Am. Jur. Proof of Facts 2d 1, Medical Malpractice – Use of Hospital Records.
38 Am. Jur. Proof of Facts 2d 145, Foundation for Admissibility of Hospital Records and X-rays.
36 Am. Jur. Trials 695, Obtaining, Organizing and Abstracting Medical Records for Use in a Lawsuit.

Practice References.
Young, Trial Handbook for Mississippi Lawyers § 24:16.

§ 41-9-115. Obtaining personal attendance of custodian and production of original record.

The personal attendance of the custodian and the production of the original record shall be required if the subpoena duces tecum contains a clause which reads:

"Original records are required, and the procedure authorized pursuant to Section 41-9-103 will not be deemed sufficient compliance with this subpoena."

HISTORY:
Codes, 1942, § 7146.3-08; Laws, 1971, ch. 375, § 8, eff from and after passage (approved March 16, 1971).

Cross References —
Subpoena duces tecum, see § 11-1-51.

JUDICIAL DECISIONS

1. In general.

The procedure for the acquisition, identification and admission of hospital records is set forth in Code 1942, §§ 7146.3-02 to 7146.3-08. Jolly v. State, 269 So. 2d 650, 1972 Miss. LEXIS 1232 (Miss. 1972).

RESEARCH REFERENCES

Am. Jur.

22 Am. Jur. Proof of Facts 2d 1, Medical Malpractice – Use of Hospital Records.

38 Am. Jur. Proof of Facts 2d 145, Foundation for Admissibility of Hospital Records and X-rays.

36 Am. Jur. Trials 695, Obtaining, Organizing and Abstracting Medical Records for Use in a Lawsuit.

§ 41-9-117. Substitution of copies after introduction of records into evidence.

In view of the property right of the hospital in its records, original records may be withdrawn after introduction into evidence and copies substituted, unless otherwise directed for good cause by the court, judge, officer, body, or tribunal conducting the hearing. The custodian may prepare copies of original records in advance of testifying for the purpose of making substitution of the original record, and the reasonable charges for making such copies shall be taxed as costs of court. If copies are not prepared in advance, they can be made and substituted at any time after introduction of the original record, and the reasonable charges for making such copies shall be taxed as costs of court.

HISTORY:

Codes, 1942, § 7146.3-08; Laws, 1971, ch. 375, § 8, eff from and after passage (approved March 16, 1971).

JUDICIAL DECISIONS

1. In general.

The procedure for the acquisition, identification and admission of hospital records is set forth in Code 1942, §§ 7146.3-02 to 7146.3-08. Jolly v. State, 269 So. 2d 650, 1972 Miss. LEXIS 1232 (Miss. 1972).

RESEARCH REFERENCES

Am. Jur.

22 Am. Jur. Proof of Facts 2d 1, Medical Malpractice – Use of Hospital Records.

38 Am. Jur. Proof of Facts 2d 145, Foundation for Admissibility of Hospital Records and X-rays.

36 Am. Jur. Trials 695, Obtaining, Organizing and Abstracting Medical Records for Use in a Lawsuit.

§ 41-9-119. Evidence of reasonableness of medical expenses.

Proof that medical, hospital, and doctor bills were paid or incurred because of any illness, disease, or injury shall be prima facie evidence that such bills so paid or incurred were necessary and reasonable.

HISTORY:

Codes, 1942, § 7146.3-10; Laws, 1971, ch. 375, § 10, eff from and after passage (approved March 16, 1971).

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Rebuttal of reasonableness and necessity.

1. In general.

In a personal injury action involving a rear-end vehicle collision, a trial court did not abuse its discretion by denying a motion for an additur by driver 1, who was in the stopped vehicle, because while driver 1's medical bills established a presumption that those bills were reasonable and necessary for the treatment of her injuries, the medical bills were not prima facie evidence that the accident was the proximate cause of driver 1's injuries. Downs v. Ackerman, 115 So. 3d 785, 2013 Miss. LEXIS 350 (Miss. 2013).

According to the testimony, the pedestrian's medical bills were incurred due to the injury at issue; under Miss. Code Ann. § 41-9-119, the trial court committed reversible error by refusing to allow them to be submitted to the jury; and a new trial was ordered, with directions that the parties be allowed to supplement their discovery responses with respect to expert witnesses. Estate of Bolden v. Williams, 17 So. 3d 1069, 2009 Miss. LEXIS 275 (Miss. 2009).

Although Miss. Code Ann. § 41-9-119 creates a presumption that proof of medical bills acts as prima facie evidence of their reasonableness and necessity, the presumption is rebuttable and the ultimate determination is for the finder of fact to make. Additionally, a finding that medical bills are reasonable and necessary does not equate to a finding that those bills were incurred as a result of a defendant's negligence. Callahan v. Ledbetter, 992 So. 2d 1220, 2008 Miss. App. LEXIS 547 (Miss. Ct. App. 2008).

In the father's petition to clarify his child support obligations, the chancellor's finding that counseling for his sons was not medically necessary was appropriate even though the mother had submitted the bill into evidence because the father further established that the boys only went to counseling one time and that the doctor did not order any follow-up treatment. Wilkerson v. Wilkerson, 955 So. 2d 903, 2007 Miss. App. LEXIS 10 (Miss. Ct. App. 2007).

In an insurance dispute, the insurer's motion in limine to prohibit the introduction of plaintiff's unauthenticated medical records was denied because plaintiff, who would testify as to the authenticity of the records, was able to make a showing that would allow the jury to conclude that her medical bills and records were authentic. Simpson v. Econ. Premier Assur. Co., 2006 U.S. Dist. LEXIS 64603 (N.D. Miss. Sept. 8, 2006).

Miss. Code Ann. § 41-9-119 dictated that the decedent's medical bills were prima facie evidence of their necessity and reasonableness, and the opposing party may rebut the necessity and reasonableness of the bills, thereby leaving the ultimate determination to the jury; in light of the medical testimony, the appellate court did not agree that the verdict regarding the medical bills was the product of bias and passion, and denied additur to the estate administrator. In re Estate of Guillory v. McGee, 922 So. 2d 823, 2006 Miss. App. LEXIS 123 (Miss. Ct. App. 2006).

Miss. Code Ann. § 41-9-119 is widely used in state court proceedings to permit the authentication of medical records; while the statute deals, on its face, with the evidentiary weight to be given to the evidence, it is often used to authenticate evidence as well. Simpson v. Econ. Premier Assur. Co., 2006 U.S. Dist. LEXIS 64603 (N.D. Miss. Sept. 8, 2006).

Miss. Code Ann. § 41-9-119 does not require evidence of reasonableness of medical expenses before medical bills become admissible; therefore, a trial court erred by holding that an insurer was required to have doctors testify as to the reasonableness of certain expenses prior to admitting them into evidence. Alfa Mut. Ins. Co. v. Cascio, 909 So. 2d 174, 2005 Miss. App. LEXIS 588 (Miss. Ct. App. 2005).

Trial court did not err in refusing to allow plaintiff to testify concerning her medical bills pursuant to Miss. Code Ann. § 41-9-119 because plaintiff's daughter was treated for diabetes and other medical conditions unrelated to an allegedly negligent intubation, and would have incurred most of the medical bills at issue regardless of any negligence by the doctor or hospital. Kent v. Baptist Mem'l Hosp. - N. Miss., Inc., 853 So. 2d 873, 2003 Miss. App. LEXIS 790 (Miss. Ct. App. 2003).

An award of zero damages in a motor vehicle accident case was affirmed since, even if proof that the plaintiff incurred medical bills was prima facie evidence that the bills were necessary and reasonable, the statute did not mandate a finding that those medical bills were incurred as a result of the accident in question. Herring v. Poirrier, 797 So. 2d 797, 2000 Miss. LEXIS 176 (Miss. 2000).

In order for a claimant to introduce evidence to support a claim against an estate for medical expenses upon contest, the claimant may proceed under § 41-9-119, but to do this, he or she must be allowed to go into court to present the bills incurred and to testify for what purpose they were incurred. Since a summary judgment, by its nature, disposes of a case before a trial is commenced, summary judgment practice under Rule 56, Miss. R. Civ. P. is inapplicable in contests of probated claims because it is inconsistent with the statutory procedure which necessitates that a claimant enter court to introduce evidence in support of his or her claim and permits a personal representative to rebut the claim. Thus, the procedure for summary judgment is not applicable to dispose of claims made under § 91-7-149. Biloxi Regional Medical Center, Inc. v. Estate of Ross, 546 So. 2d 667, 1989 Miss. LEXIS 297 (Miss. 1989).

Documents were properly admitted into evidence which provided proof of expenses incurred as result of treatment for injuries sustained in accident, where documents submitted gave general descriptions of services necessitating fees. Stratton v. Webb, 513 So. 2d 587, 1987 Miss. LEXIS 2831 (Miss. 1987).

Bills and prescription receipts evidencing charges made for medical and dental treatment furnished to children provide prima facie showing, in accordance with § 41-9-119, in child support proceeding, that medical and dental expenses represented by bills are reasonable in amount and were necessarily incurred. Clements v. Young, 481 So. 2d 263, 1985 Miss. LEXIS 2373 (Miss. 1985).

Any medical or dental condition, present at birth or thereafter caused, is "illness, disease or injury" within meaning of § 41-9-119. Clements v. Young, 481 So. 2d 263, 1985 Miss. LEXIS 2373 (Miss. 1985).

Under § 41-9-119, when a party takes the witness stand, exhibits bills for examination by the court, and testifies that the bills were incurred as a result of the injuries complained of, they become prima facie evidence that the bills so paid or incurred were necessary and reasonable; however, the opposing party may, if desired, rebut the necessity and reasonableness of the bills by proper evidence and the ultimate question is then for the jury to determine. Jackson v. Brumfield, 458 So. 2d 736, 1984 Miss. LEXIS 1975 (Miss. 1984).

2. Rebuttal of reasonableness and necessity.

In a suit against a city under the Mississippi Tort Claims Act, an alleged injured party was not required to introduce expert testimony to determine the cause of the party's injuries because (1) the city did not rebut testimony proving the party's medical treatment was the result of an underlying crash, and (2) the party submitted medical bills and records showing the party attended physical therapy after the accident, which the city had the opportunity to rebut. City of Jackson v. Graham, 226 So. 3d 608, 2017 Miss. App. LEXIS 538 (Miss. Ct. App. 2017).

Under Miss. Code Ann. § 41-9-119, when plaintiff customer took the witness stand and exhibited his medical bills for examination by the court and testified that they were incurred as a result of the injuries complained of, they became prima facie evidence and triggered the presumption that the bills so paid or incurred were necessary and reasonable; however, defendant restaurant operator could have, if it so desired, rebutted the necessity and reasonableness of the bills by proper evidence. Because Miss. Code Ann. § 41-9-119, via Fed. R. Evid. 302, applied in this case, the customer's medical bills were properly admitted. Foradori v. Harris, 523 F.3d 477, 2008 U.S. App. LEXIS 6937 (5th Cir. Miss. 2008).

In a personal injury case, the court properly denied plaintiff's request for additur because she did not conclusively prove that the medical bills in question were incurred as a result of her injury; the only bills that were uncontested were those that plaintiff incurred immediately after the accident, which related to bruises to her knees and other minor injuries, and virtually every other injury, both physical and mental, was strongly contested by the defendants' expert witnesses and other evidence. Walker v. Gann, 955 So. 2d 920, 2007 Miss. App. LEXIS 290 (Miss. Ct. App. 2007).

Husband's proof that he had paid or incurred medical, hospital, and doctor bills because of injury he sustained when catheter guide wire broke off in his artery while the doctor was performing surgery was prima facie evidence that such bills were necessary and reasonable and the doctor did not overcome such evidence with his own evidence that the bills incurred were not reasonable and necessary. Purdon v. Locke, 807 So. 2d 373, 2001 Miss. LEXIS 263 (Miss. 2001).

Notwithstanding the statute, an opposing party may rebut the necessity and reasonableness of medical bills and the ultimate question is for the jury to determine. Herring v. Poirrier, 797 So. 2d 797, 2000 Miss. LEXIS 176 (Miss. 2000).

The defendant failed to rebut the reasonableness and necessity of the plaintiff's medical bills, where she offered no evidence and chose instead to rely upon her argument that she impeached both the plaintiff's and the plaintiff's physician's testimony; while notations in the medical records may have cast doubt on the extent of the plaintiff's pain and suffering, those notations did not invalidate the necessity of the medical treatment. Hubbard v. Canterbury, 805 So. 2d 545, 2000 Miss. App. LEXIS 143 (Miss. Ct. App. 2000).

RESEARCH REFERENCES

Am. Jur.

22 Am. Jur. Proof of Facts 2d 1, Medical Malpractice – Use of Hospital Records.

38 Am. Jur. Proof of Facts 2d 145, Foundation for Admissibility of Hospital Records and X-rays.

36 Am. Jur. Trials 695, Obtaining, Organizing and Abstracting Medical Records for Use in a Lawsuit.

RURAL HOSPITAL FLEXIBILITY ACT

Sec.	
41-9-201.	Short title.
41-9-203.	State policy.
41-9-205.	Definitions.
41-9-207.	State rural health-care plan.
41-9-209.	Designation as a critical access hospital.
41-9-210.	Critical access hospitals authorized to bank licensed hospital acute care beds; banked beds may be relicensed without certificate of need.
41-9-211.	Formation of a rural health network not subject to antitrust laws.
41-9-213.	Rules and regulations.
41-9-215.	Insurance and other coverage to provide benefits for services performed by critical access hospitals.
41-9-217.	Additional personnel.

§ 41-9-201. Short title.

This article is entitled and may be cited as the Mississippi Rural Hospital Flexibility Act of 1998.

HISTORY:

Laws, 1998, ch. 476, § 1, eff from and after passage (approved March 26, 1998).

§ 41-9-203. State policy.

It is the policy of the State of Mississippi to provide improved access to hospital and other health services for rural residents of the State of Mississippi and to promote regionalization of rural health services in Mississippi.

HISTORY:

Laws, 1998, ch. 476, § 2, eff from and after passage (approved March 26, 1998).

§ 41-9-205. Definitions.

When used in this article, the following definitions shall apply, unless the context indicates otherwise:

(a) "Act" means the Mississippi Rural Hospital Flexibility Act of 1998.

(b) "Critical access hospital" means a hospital which has been designated as a critical access hospital by the department in accordance with the Medicare Rural Hospital Flexibility Program, as provided for in Section 4201 of the Balanced Budget Act of 1997, Public Law 105-33, and which has entered into an agreement with at least one (1) full-service hospital to form a rural health network. The agreement or agreements must include provisions regarding patient referral and transfer, communications and patient transportation. A critical access hospital in a rural health network must also have an agreement for credentialing and quality assurance with at least one (1) hospital that is a member of the rural health network, or with a peer review organization or equivalent entity, or with another appropriate and qualified entity identified in the rural health-care plan for the State of Mississippi.

(c) "Department" means the Department of Health for the State of Mississippi.

(d) "Rural health network" means an organization consisting of at least one (1) critical access hospital and at least one (1) full-service hospital, the members of which have entered into certain agreements regarding patient referral and transfer, the development and use of communications systems and the provision of emergency and nonemergency transportation.

(e) "State rural health-care plan" means Mississippi's rural health-care plan that (i) provides for the creation of one or more rural health networks, consisting of at least one (1) critical access hospital and at least one (1) full-service hospital, (ii) promotes regionalization of rural health services in Mississippi, and (iii) improves access to hospitals and other health services for rural residents of Mississippi.

HISTORY:

Laws, 1998, ch. 476, § 3, eff from and after passage (approved March 26, 1998).

Federal Aspects—

The Medicare Rural Hospital Flexibility Program, as provided for in § 4201 of the Balanced Budget Act of 1997, Public Law 105-33, is codified at 42 USCS § 1395i-4.

§ 41-9-207. State rural health-care plan.

(1) The department is hereby authorized, in accordance with the Medicare Rural Hospital Flexibility Program, as authorized by Section 4201 of the Balanced Budget Act of 1997, Public Law 105-33, to develop for the State of Mississippi a state rural health-care plan that (a) provides for the creation of one or more rural health networks in Mississippi; (b) promotes regionalization of rural health services in Mississippi; and (c) improves access to hospitals and other health services for rural residents of Mississippi.

(2) The state rural health-care plan shall be developed in consultation with the Mississippi Hospital Association, the Executive Director of the Mississippi Board of Supervisors, or his designee, and rural hospitals located in Mississippi.

(3) In developing the state rural health-care plan, the department shall designate rural nonprofit or public hospitals or facilities located in Mississippi as critical access hospitals, which critical access hospitals must meet the criteria for such designation as set out in Section 4201 of the Balanced Budget Act of 1997.

HISTORY:

Laws, 1998, ch. 476, § 4, eff from and after passage (approved March 26, 1998).

Federal Aspects—

The Medicare Rural Hospital Flexibility Program, as provided for in § 4201 of the Balanced Budget Act of 1997, Public Law 105-33, is codified at 42 USCS § 1395i-4.

§ 41-9-209. Designation as a critical access hospital.

Any hospital is authorized to seek designation as a critical access hospital. Subject to federal law, there shall be no requirement or limitation regarding the distance that a critical access hospital must be located from another hospital. The bed-size limit for a critical access hospital is twenty-five (25) operational acute care beds, and the average maximum length of stay for patients in a critical access hospital is ninety-six (96) hours, unless a longer period is required because of inclement weather or other emergency conditions. In the event the critical access hospital is a swing bed facility, any of the twenty-five (25) acute care beds allowed in a critical access hospital may be used for the provision of extended care services or acute care inpatient services so long as the furnishing of such services does not exceed twenty-five (25) beds and so long as the hospital does not seek Medicaid reimbursement for more than fifteen (15) acute care inpatient beds. A critical access hospital (a) must make available twenty-four-hour emergency care services, as described in the state rural health-care plan, for ensuring access to emergency care services in the rural area served by the critical access hospital, and (b) must be a member of a rural health network. Any hospital that has a distinct-part skilled nursing facility, certified under Title XVIII of the federal Social Security Act, at the time it applies for designation as a critical access hospital, may continue its operation of the distinct-part skilled nursing facility and is not required to count the beds in the distinct-part skilled nursing facility for purposes of the allowed twenty-five (25) acute care inpatient beds. To the extent permitted under Section 41-7-171 et seq., a critical access hospital may establish a distinct-part psychiatric unit and a distinct-part rehabilitation unit, each of which must be certified under Title XVIII of the federal Social Security Act and each of which may consist of no more than ten (10) beds. No bed in the critical access hospital's distinct-part psychiatric unit or distinct-part rehabilitation unit shall be counted for purposes of the twenty-five (25) bed limitation. Each distinct-part unit in a critical access hospital must comply with all applicable state licensure laws and federal certification laws.

HISTORY:

Laws, 1998, ch. 476, § 5; Laws, 2004, ch. 329, § 1, eff from and after July 1, 2004.

Federal Aspects—

Title XVIII of the federal Social Security Act is codified at 42 USCS §§ 1395 et seq.

§ 41-9-210. Critical access hospitals authorized to bank licensed hospital acute care beds; banked beds may be relicensed without certificate of need.

If a hospital seeks a new license from the department in order to be designated as a critical access hospital, the department shall maintain a record of the acute care beds of that hospital that have been delicensed as a result of that designation and continue counting those beds as part of the state's total acute care bed count for health care planning purposes. If a critical access hospital later desires to relicense some or all of its delicensed acute care beds, it shall notify the department of its intent to increase the number of its licensed acute care beds. The department shall survey the hospital within thirty (30) days of that notice and, if appropriate, issue the hospital a new license reflecting the new contingent of beds. That change may be accomplished without the need of the hospital to seek certificate of need approval under Section 41-7-171 et seq. However, in no event may a hospital that has delicensed some of its acute care beds in order to be designated as a critical access hospital be reissued a license to operate acute care beds in excess of its acute care bed count before the delicensure of some of its beds without seeking certificate of need approval.

This section shall apply to all hospitals that are designated as critical access hospitals on July 1, 2003, and all hospitals that may become designated as critical access hospitals after July 1, 2003.

HISTORY:
Laws, 2003, ch. 393, § 1, eff from and after July 1, 2003.

Cross References —
Activities for which a certificate of need is required, see § 41-7-191.

§ 41-9-211. Formation of a rural health network not subject to antitrust laws.

In forming an integrated network and in contracting for services, members of a rural health network and officers, agents, representatives, employees and directors of any member thereof shall be considered to be acting pursuant to clearly expressed state policy as established in Sections 41-9-201 through 41-9-217 under the supervision of the State of Mississippi and shall not be subject to state or federal antitrust laws while so acting.

HISTORY:
Laws, 1998, ch. 476, § 6, eff from and after passage (approved March 26, 1998).

§ 41-9-213. Rules and regulations.

The department shall adopt, in accordance with Section 25-43-1 et seq., Mississippi Code of 1972, rules and regulations for the establishment and operation of rural health networks, including the designation of critical access hospitals of rural areas and minimum standards, as necessary, for such critical access hospitals.

HISTORY:
Laws, 1998, ch. 476, § 7, eff from and after passage (approved March 26, 1998).

Editor's Notes —
Section 25-43-1.101(3) provides that any reference to Section 25-43-1 et seq. shall be deemed to mean and refer to Section 25-43-1.101 et seq.

§ 41-9-215. Insurance and other coverage to provide benefits for services performed by critical access hospitals.

Each individual and group policy of accident and sickness insurance, each contract issued by health maintenance organizations, and all coverage maintained by an entity authorized under any article of Chapter 41, Title 83 of the Mississippi Code of 1972, shall provide benefits for services when performed by a critical access hospital if such services would be covered under such policies or contracts if performed by a full-service hospital.

HISTORY:
Laws, 1998, ch. 476, § 8, eff from and after passage (approved March 26, 1998).

§ 41-9-217. Additional personnel.

The department is hereby authorized to hire additional personnel to implement Sections 41-9-201 through 41-9-217 pursuant to specific appropriations to the department for such purposes.

HISTORY:
Laws, 1998, ch. 476, § 9, eff from and after passage (approved March 26, 1998).

RURAL HEALTH AVAILABILITY ACT

Sec.
41-9-301. Short title.
41-9-303. Legislative findings.
41-9-305. Definitions.
41-9-307. Cooperative agreements; application for certificate of public advantage; issuance of certificate; monitoring; revocation of certificate; termination or withdrawal from agreement; amendment of agreement; regulations.
41-9-309. Judicial review.
41-9-311. Certificates of need.

§ 41-9-301. Short title.

Sections 41-9-301 through 41-9-311 shall be known and may be cited as the “Rural Health Availability Act.”

HISTORY:
Laws, 2004, ch. 462, § 1, eff from and after July 1, 2004.

Joint Legislative Committee Note —
Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error. “Sections 41-9-301 through 41-9-311” was substituted for “this act.”

§ 41-9-303. Legislative findings.

The Legislature finds and declares the following:

(a) In rural areas, access to health care is limited and the quality of health care is adversely affected by inadequate reimbursement and collection rates and difficulty in recruiting and retaining skilled health professionals.

(b) There is limited, if any, overlap in the geographic service areas of Mississippi rural hospitals.

(c) Rural hospitals' financial stability is threatened by patient migration to general acute care and specialty hospitals in urban areas.

(d) The availability of quality health care in rural areas is essential to the economic and social viability of rural communities.

(e) Cooperative agreements among rural hospitals would improve the availability and quality of health care for Mississippians in rural areas and enhance the likelihood that rural hospitals can remain open.

HISTORY:
Laws, 2004, ch. 462, § 2, eff from and after July 1, 2004.

§ 41-9-305. Definitions.

For the purposes of Sections 41-9-301 through 41-9-311, the following terms shall have the following meanings:

(a) "Act" means the Rural Health Availability Act.

(b) "Affected person," with respect to any application for a certificate of public advantage, means:

(i) The applicant(s);

(ii) Any person residing within the geographic service area of an applicant;

(iii) Health-care purchasers who reimburse health-care facilities located in the geographic service area of an applicant;

(iv) Any other person furnishing goods or services to, or in competition with, an applicant; or

(v) Any other person who has notified the department in writing of his interest in applications for certificates of public advantage and has a direct economic interest in the decision.

Notwithstanding the foregoing, persons from other states who would otherwise be considered "affected persons" are not included, unless that other state provides for similar involvement of persons from Mississippi in a similar process in that state.

(c) "Board" means the State Board of Health established under Section 41-3-1.

(d) "Certificate of public advantage" means the formal written approval, including any conditions or modifications of a cooperative agreement by the department.

(e) "Cooperative agreement" means a contract, business or financial arrangement, or any other activities or practices among two (2) or more rural hospitals for the sharing, allocation, or referral of patients; the sharing or allocation of personnel, instructional programs, support services and facilities, medical, diagnostic or laboratory facilities, procedures, equipment or other health-care services; the acquisition or merger of assets among or by two (2) or more rural hospitals, including agreements to negotiate jointly with respect to price or other competitive terms with suppliers. The term "cooperative agreement" includes any amendments thereto with respect to which a certificate of public advantage has been issued or applied for or with respect to which a certificate of public advantage is not required, unless the context clearly requires otherwise.

(f) "Department" means the State Department of Health created under Section 41-3-15.

(g) "Hospital" has the meaning set forth in Section 41-9-3.

(h) "Rural area" means an area with a population density of less than one hundred (100) individuals per square mile; a municipality or county with a population of less than seven thousand five hundred (7,500) individuals; or an area defined by the most recent United States Census as rural.

(i) "Rural hospital" means a private or community hospital having at least one (1) but no more than seventy-five (75) licensed acute-care beds that is located in a rural area.

(j) "State" means the State of Mississippi.

(k) "State Health Officer" means the State Health Officer elected by the State Board of Health under Section 41-3-5.

The use of a singular term in this section includes the plural of that term, and the use of a plural term in this section includes the singular of that term, unless the context clearly requires another connotation.

HISTORY:

Laws, 2004, ch. 462, § 3, eff from and after July 1, 2004.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error. "Sections 41-9-301 through 41-9-311" was substituted for "this act" in the introductory language.

Editor's Notes —

Section 41-3-1, referred to in (c), was repealed by Laws, 2007, ch. 514, § 1, effective March 30, 2007. For reconstitution of State Board of Health, see § 41-3-1.1.

Section 41-3-5, referred to in (k), was repealed by Laws, 2007, ch. 514, § 1, effective June 30, 2007.

§ 41-9-307. Cooperative agreements; application for certificate of public advantage; issuance of certificate; monitoring; revocation of certificate; termination or withdrawal from agreement; amendment of agreement; regulations.

(1) A rural hospital and any corporation, partnership, joint venture or any other entity, all of whose principals are rural hospitals, may negotiate and enter into cooperative agreements with other such persons in the state, subject to receipt of a certificate of public advantage governing the agreement as provided in this act.

(2) Parties to a cooperative agreement may apply to the department for a certificate of public advantage governing that cooperative agreement. The application must include an executed written copy of the cooperative agreement and describe the nature and scope of the cooperation in the agreement and any consideration passing to any party under the agreement. Within

thirty (30) days of receipt of the application, the department may request additional information as may be necessary to complete the application. The applicant has thirty (30) days from the date of the request to submit the additional information. If the applicant fails to submit the requested information within the thirty-day period, or any extension of time granted by the department, the application is deemed withdrawn. The department may require an application fee from the submitting parties sufficient to cover the cost of processing the application.

(3) The department shall review the application in accordance with the standards set forth in subsection (4) of this section. The department shall give notice of the application to members of the public who reside in the service areas of the applicant hospitals, which may be provided through newspapers of general circulation or public information channels. If requested by an affected person within thirty (30) days of the giving of the public notice, the department may hold a public hearing in accordance with the rules adopted by the board. The department shall grant or deny the application within sixty (60) days after receipt of a completed application or from the date of the public hearing, if one is held, and that decision, along with any conditions of approval, must be in writing and must set forth the basis for the decision. The department may establish conditions for approval that are reasonably necessary to ensure that the cooperative agreement and the activities engaged under it are consistent with the intent of this act and to ensure that the activity is appropriately supervised and regulated by the state. The department shall furnish a copy of the decision to the applicants and any affected persons who have asked in writing to be notified.

(4) The department shall issue a certificate of public advantage for a cooperative agreement if it determines that:

(a) Each of the parties to the cooperative agreement is a rural hospital or is a corporation, partnership, joint venture or other entity all of whose principals are rural hospitals;

(b) The geographic service area of the rural hospitals who are parties to the agreement do not overlap significantly; and

(c) The cooperative agreement is likely to result in one or more of the following benefits:

(i) Enhancement of the quality of hospital and hospital-related care provided to Mississippi citizens;

(ii) Preservation of hospital facilities and health care in rural areas;

(iii) Gains in the cost-efficiency of services provided by the hospitals involved;

(iv) Encouragement of cost-sharing among the hospitals involved;

(v) Improvements in the utilization of hospital resources and equipment; or

(vi) Avoidance or reduction of duplication of hospital resources or expenses, including administrative expenses.

(5) The department shall actively monitor and regulate agreements approved under this act and may request information whenever necessary to

ensure that the agreements remain in compliance with the conditions of approval. The department may charge an annual fee to cover the cost of monitoring and regulating these agreements. During the time the certificate is in effect, a report on the activities under the cooperative agreement must be filed with the department every two (2) years. The department shall review the report in order to determine that the cooperative agreement continues to comply with the terms of the certificate of public advantage.

(6) The department shall revoke a certificate of public advantage by giving written notice to each party to a cooperative agreement with respect to which the certificate is being revoked, if it finds that:

(a) The cooperative agreement or activities undertaken by it are not in substantial compliance with the terms of the application or the conditions of approval;

(b) The likely benefits resulting from the cooperative agreement no longer exist; or

(c) The department's approval was obtained as a result of intentional material misrepresentation to the department or as the result of coercion, threats or intimidation toward any party to the cooperative agreement.

(7) The department shall maintain on file all cooperative agreements for which certificates of public advantage remain in effect. A party to a cooperative agreement who terminates or withdraws from the agreement shall notify the department within fifteen (15) days of the termination or withdrawal. If all parties terminate their participation in the cooperative agreement, the department shall revoke the certificate of public advantage for the agreement.

(8) The parties to a cooperative agreement with respect to which a certificate of advantage is in effect must notify the department of any proposed amendment to the cooperative agreement, including an amendment to add an additional party but excluding an amendment to remove or to reflect the withdrawal of a party, before the amendment takes effect. The parties must apply to the department for a certificate of public advantage governing the amendment and the department shall consider and rule on the application in accordance with the procedures applicable to cooperative agreements generally.

(9) The department may promulgate rules and regulations in accordance with the Administrative Procedures Law as in effect from time to time to implement the provisions of this act, including any fees and application costs associated with the monitoring and oversight of cooperative agreements approved under this act.

(10) A dispute among the parties to a cooperative agreement concerning its meaning or terms is governed by the principles of contract law or any other applicable law.

HISTORY:

Laws, 2004, ch. 462, § 4, eff from and after July 1, 2004.

§ 41-9-309. Judicial review.

Any applicant aggrieved by a decision of the department under this act shall be entitled to judicial review thereof in the Circuit Court of Hinds County, First Judicial District. In the review, the decision of the department shall be affirmed unless it is arbitrary, capricious, or it is not in compliance with this act.

HISTORY:
Laws, 2004, ch. 462, § 5, eff from and after July 1, 2004.

§ 41-9-311. Certificates of need.

Nothing in this act exempts hospitals from compliance with the provisions of Section 41-7-171 et seq. concerning certificates of need.

HISTORY:
Laws, 2004, ch. 462, § 6, eff from and after July 1, 2004.

CHAPTER 10.

MEDICAL RECORDS

Sec.	
41-10-1.	Willful or reckless placement of inaccurate information in patient's record; intentional alteration or destruction of patient's records; penalties.
41-10-3.	Heirs of decedents authorized to obtain copy of decedent's medical records under certain circumstances; termination of authorization.

§ 41-10-1. Willful or reckless placement of inaccurate information in patient's record; intentional alteration or destruction of patient's records; penalties.

(1) Except as otherwise provided in subsection (3), a person, knowing that the information is misleading or inaccurate, shall not intentionally, willfully or recklessly place or direct another to place in a patient's medical record or chart misleading or inaccurate information regarding the diagnosis, care, treatment or cause of a patient's condition. A violation of this subsection is punishable as follows: a person who intentionally or willfully or recklessly violates this subsection is guilty of a misdemeanor, punishable by imprisonment for not more than one (1) year, or a fine of not more then One Thousand Dollars ($1,000.00), or both.

(2) Except as otherwise provided in subsection (3), a person shall not intentionally or willfully alter or destroy or direct another to alter or destroy a patient's medical records or charts for the purpose of concealing his or her responsibility for the patient's injury, sickness or death. A person who violates this subsection is guilty of a misdemeanor punishable by imprisonment for not more than one (1) year, or a fine of not more than One Thousand Dollars ($1,000.00), or both.

(3) Subsections (1) and (2) do not apply to either of the following:

(a) Destruction of a patient's original medical record or chart if all of the information contained in or on the medical record or chart is otherwise retained by means of mechanical or electronic recording, chemical reproduction, or other equivalent techniques that accurately reproduce all of the information contained in or on the original.

(b) Supplementation of information or correction of an error in a patient's medical record or chart in a manner that reasonably discloses that the supplementation or correction was performed and that does not conceal or alter prior entries.

HISTORY:

Laws, 2001, ch. 603, § 12, eff from and after July 1, 2001.

Cross References —

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violations, see § 99-19-73.

§ 41-10-3. Heirs of decedents authorized to obtain copy of decedent's medical records under certain circumstances; termination of authorization.

(1) The following words and phrases shall have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Heir" means any person who is entitled to a distribution from the estate of an intestate decedent, or a person who would be entitled to a distribution from the estate of a testate decedent if that decedent had died intestate.

(b) "Medical records" means any communications related to a patient's physical or mental health or condition that are recorded in any form or medium and that are maintained for purposes of patient diagnosis or treatment, including communications that are prepared by a health-care provider or by other providers. The term does not include (i) materials that are prepared in connection with utilization review, peer review or quality assurance activities, or (ii) recorded telephone and radio communications to and from a publicly operated emergency dispatch office relating to requests for emergency services or reports of suspected criminal activity; however, the term includes communications that are recorded in any form or medium between emergency medical personnel and medical personnel concerning the diagnosis or treatment of a patient.

(2) Where no executor or administrator has been appointed by a chancery court of competent jurisdiction regarding the probate or administration of the estate of a decedent, any heir of the decedent shall be authorized to act on behalf of the decedent solely for the purpose of obtaining a copy of the decedent's medical records. The authority shall not extend to any other property rights relating to the decedent's estate.

(3) A custodian of medical records may provide a copy of the decedent's medical records to an heir upon receipt of an affidavit by the heir stating that he or she meets the requirements of this section and that no executor or administrator has been appointed by a chancery court with respect to the estate of the decedent.

(4) The authority of the heir to act on behalf of the decedent shall terminate upon the appointment of an executor or administrator to act on behalf of the estate of the decedent. However, the custodian of medical records shall be entitled to rely upon the affidavit of the heir until the custodian of medical records receives written notice of the appointment of an executor or administrator.

(5) A custodian of medical records shall not be required to provide more than three (3) heirs with a copy of the decedent's medical records before the appointment of an executor or administrator.

(6) The provisions of this section shall not prohibit an executor or administrator from requesting and receiving the medical records of a decedent after his or her appointment.

HISTORY:

Laws, 2009, ch. 524, § 1, eff from and after July 1, 2009.

CHAPTER 11.

STATE CHARITY HOSPITALS; MISSISSIPPI CHILDREN'S REHABILITATION CENTER

In General. 41-11-1
South Mississippi State Hospital. [Repealed] 41-11-31
Matty Hersee Hospital. [Repealed] 41-11-51
Diagnostic and Treatment Center. [Repealed] 41-11-71
Mississippi Children's Rehabilitation Center. 41-11-101

IN GENERAL

Sec.
41-11-1 through 41-11-5. Repealed.
41-11-7. Certain counties and municipalities authorized to make appropriations to University of Mississippi Medical Center.
41-11-9. Repealed.
41-11-11. Closure of Kuhn Memorial State Hospital, South Mississippi State Hospital, and Matty Hersee Hospital; procedures.

§§ 41-11-1 through 41-11-5. Repealed.

Repealed by Laws, 1989, ch. 527, § 3, eff from and after June 30, 1989.

§ 41-11-1. [Codes, Hemingway's 1917, § 3966; 1930, § 4610; 1942, § 6965; Laws, 1912, ch. 166; Laws, 1922, ch. 246]

§ 41-11-3. [Codes, 1930, § 4612; 1942, § 6967; Laws, 1924, ch. 307]

§ 41-11-5. [Codes, 1930, § 4613; 1942, § 6968; Laws, 1924, ch. 307]

Editor's Notes —

Former § 41-11-1 pertained to admission of patients into charity hospital.

Former § 41-11-3 directed the board of trustees to prescribe terms of admission.

Former § 41-11-5 required the superintendent to keep account of cost of treatment.

§ 41-11-7. Certain counties and municipalities authorized to make appropriations to University of Mississippi Medical Center.

In all counties and municipalities whose residents use the facilities of the University of Mississippi Medical Center, the board of supervisors is hereby authorized and empowered, in its discretion, to make an unlimited annual appropriation to the Medical Center, and the governing authorities of the municipality are hereby authorized and empowered, in their discretion, to make an unlimited annual appropriation to the Medical Center. The funds thus appropriated by the county and by the municipality for the added maintenance and support of the Medical Center shall be paid from the General Fund of the county and the municipality, and the amount thus appropriated by the county and by the municipality may be paid in monthly installments for the use and benefit of the Medical Center.

HISTORY:

Codes, 1942, §§ 2998.5, 2998.7; Laws, 1950, ch. 297; Laws, 1958, ch. 358; Laws, 1979, ch. 400, § 1; Laws, 1989, ch. 527, § 2, eff from and after June 30, 1989.

Cross References —

University of Mississippi medical Center, see §§ 37-115-41 et seq.

§ 41-11-9. Repealed.

Repealed by Laws, 1989, ch. 527, § 3, eff from and after June 30, 1989.

[Codes, Hemingway's 1917, § 3966; 1930, §§ 4610, 4611; 1942, §§ 6965, 6966; Laws, 1912, ch. 166; Laws, 1922, ch. 246]

Editor's Notes —

Former § 41-11-9 provided penalties for violations as to admissions.

§ 41-11-11. Closure of Kuhn Memorial State Hospital, South Mississippi State Hospital, and Matty Hersee Hospital; procedures.

(1) From and after July 1, 1989, the Kuhn Memorial State Hospital at Vicksburg, the South Mississippi State Hospital at Laurel, and the Matty Hersee Hospital at Meridian shall be closed, and the Legislature shall not appropriate any funds for the operation of those hospitals after that date. For each such hospital for which title to the hospital buildings and the land upon which they are located remains in the State of Mississippi after closure of the hospital, except for any part thereof which has been previously leased to a political subdivision or which is used by another state agency or department, the Governor's Office of General Services, Bureau of Building, Grounds and Real Property Management, shall be authorized to sell and transfer title to each of such hospital buildings and such land to any individual, corporation or other entity for an amount not less than the fair market value thereof as determined by three (3) real estate appraisers. However, prior to any such sale, the Office of General Services shall publish notice of its intention to sell the same in a newspaper of general circulation in the county in which the property is located and in Hinds County, Mississippi, and in such publication shall solicit requests for proposals for the use of such property by agencies, departments or political subdivisions of the State of Mississippi. If proposals are received, the Office of General Services shall review the proposals to determine if any proposed use of the property, both real and personal, will reasonably be used to provide a needed service not presently provided by the State of Mississippi or by a political subdivision thereof. If the Office of General Services determines that such needed service may be provided by another state agency, department or political subdivision, it shall transfer title to the real and personal property, as may be needed, to such agency, department or political subdivision subject to any leases or uses of the property by another state agency, department or political subdivision. If no proposals are received, the Office of General Services may proceed with the sale of the property as provided above in this subsection. The Office of General Services shall submit

to the Governor and the Legislature a copy of all proposals received and a detailed statement and explanation of its decision to transfer or not transfer such property no later than October 1, 1989. Any funds received from the sale of such buildings and land shall be paid into the State General Fund.

(2) Any equipment and supplies of such hospitals which cannot be used by any transferee agency, department or political subdivision and which may be used by the University Medical Center or any other agency or institution of the state shall be offered to the Medical Center and other state agencies and institutions, and may be given to any such agency or institution desiring the same upon request, at no charge. If the same equipment or supplies are requested by more than one (1) agency or institution, the State Fiscal Management Board shall determine which agency or institution will be given the equipment or supplies being requested. Any equipment and supplies remaining after being offered to the state agencies and institutions shall be sold by the Fiscal Management Board after advertising for bids thereon. Any funds received from the sale of such equipment and supplies shall be paid into the State General Fund.

(3) None of such hospitals shall admit any person as an inpatient into the hospital after June 15, 1989. Each of the hospitals shall make every effort to locate and make arrangements with hospitals or other appropriate institutions to provide treatment and care to any patients who will continue to need treatment and care after June 30, 1989.

(4) Any monies owed to such hospitals but not collected by June 30, 1989, including, but not limited to payments from Medicare, health or hospitalization insurance, other third parties, or from the patient or his family or estate, shall be paid to the Fiscal Management Board, which shall transfer all such monies received into the State General Fund. Any valid debts or other obligations of such hospitals incurred before July 1, 1989, which have not been paid or finally satisfied by June 30, 1989, including any that were not billed to the hospitals until after June 30, 1989, shall remain an obligation of the state and shall be paid by the Fiscal Management Board from funds appropriated for such purpose. Any ending cash balance of any such hospital on June 30, 1989, shall be applied to payment of any indebtedness or other obligations of that hospital before any other funds are used for such purpose.

HISTORY:

Laws, 1989, ch. 527, § 1, eff from and after June 30, 1989, except subsection (3), eff from and after June 1, 1989.

Editor's Notes —

Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration".

SOUTH MISSISSIPPI STATE HOSPITAL [REPEALED]

Sec.

41-11-31. Repealed.

§ 41-11-31. Repealed.

Repealed by Laws, 1989, ch. 527, § 3, eff from and after June 30, 1989.

[Codes, Hemingway's 1917, § 3954; 1930, § 4598; 1942, § 6931; Laws, 1916, ch. 108; Laws, 1966, ch. 452, § 1]

Editor's Notes —

Former § 41-11-31 provided for the continued existence of the South Mississippi State Hospital, formerly the South Mississippi Charity Hospital.

MATTY HERSEE HOSPITAL [REPEALED]

Sec.
41-11-51. Repealed.

§ 41-11-51. Repealed.

Repealed by Laws, 1989, ch. 527, § 3, eff from and after June 30, 1989.

[Codes, 1930, § 4601; 1942, § 6934; Laws, 1922, ch. 299; Laws, 1924, ch. 311]

Editor's Notes —

Former § 41-11-51 provided for the continued existence of the Matty Hersee Hospital, formerly the East Mississippi Charity Hospital.

DIAGNOSTIC AND TREATMENT CENTER [REPEALED]

Sec.
41-11-71 through 41-11-91. Repealed.

§§ 41-11-71 through 41-11-91. Repealed.

Repealed by Laws, 1989, ch. 527, § 3, eff from and after June 30, 1989.

§ 41-11-71. [Codes, 1942, § 6930-01; Laws, 1956, ch. 301, § 1]
§ 41-11-73. [Codes, 1942, § 6930-02; Laws, 1956, ch. 301, § 2]
§ 41-11-75. [Codes, 1942, § 6930-03; Laws, 1956, ch. 301, § 3]
§ 41-11-77. [Codes, 1942, § 6930-06; Laws, 1956, ch. 301, § 6]
§ 41-11-79. [Codes, 1942, § 6930-04; Laws, 1956, ch. 301, § 4]
§ 41-11-81. [Codes, 1942, § 6930-05; Laws, 1956, ch. 301, § 5]
§ 41-11-83. [Codes, 1942, § 6930.07; Laws, 1956, ch. 301, § 7]
§ 41-11-85. [Codes, 1942, § 6930-08; Laws, 1956, ch. 301, § 8]
§ 41-11-87. [Codes, 1942, § 6930-09; Laws, 1956, ch. 301, § 9]
§ 41-11-89. [Codes, 1942, § 6930-10; Laws, 1956, ch. 301, § 10]
§ 41-11-91. [Codes, 1942, § 6930-11; Laws, 1956, ch. 301, § 11]

Editor's Notes —

Former § 41-11-71 provided for the continued existence of the Kuhn Memorial State Hospital, formerly known as the Mississippi State Charity Hospital at Vicksburg.

Former § 41-11-73 contained definitions.

Former § 41-11-75 directed that the Kuhn Memorial State Hospital be operated as a diagnostic and treatment center for chronically ill and impaired.

Former § 41-11-77 authorized the construction of facilities at Vicksburg.

Former § 41-11-79 authorized the state building commission to accept gifts, grants, bequests and devises.

Former § 41-11-81 authorized the commission to utilize funds for construction of facilities, repair and maintenance.

Former § 41-11-83 specified the powers of state building commission.

Former § 41-11-85 authorized the charging of certain patients for treatment.

Former § 41-11-87 authorized contracts for treatment with counties, municipalities and organizations.

Former § 41-11-89 authorized any municipality or county to provide for treatment for residents.

Former § 41-11-91 pertained to the operating funds of hospitals.

MISSISSIPPI CHILDREN'S REHABILITATION CENTER

Sec.	
41-11-101.	Repealed.
41-11-102.	Children's Rehabilitation Center transferred to University of Mississippi Medical Center, Division of Children's Rehabilitation.
41-11-103.	Rules and regulations.
41-11-104.	Repealed.
41-11-105.	Constructing, erecting, and equipping center.
41-11-107.	Location of center.
41-11-109.	Transfer of center to University medical center; education of patients; eligibility for admission.
41-11-111.	Acceptance of grants, donations and funds.
41-11-113.	Declaration of intent; construction.

§ 41-11-101. Repealed.

Repealed by Laws, 1989, ch. 544, § 154, eff from and after July 1, 1989.

[Codes, 1942, § 7129-91; Laws, 1956, ch. 308, § 1; Laws, 1968, ch. 437, § 1; Laws, 1972, ch. 322, § 1; Laws, 1981, ch. 498, § 1]

Editor's Notes —

Former § 41-11-101 created the board of trustees of children's rehabilitation center.

§ 41-11-102. Children's Rehabilitation Center transferred to University of Mississippi Medical Center, Division of Children's Rehabilitation.

The administration, supervision, duties and all aspects of the Children's Rehabilitation Center shall be transferred to the University of Mississippi Medical Center in a division to be called Division of Children's Rehabilitation. It is the intent that there shall be cooperation between the center, the Blake Center and the Department of Health, Children's Services.

The University of Mississippi Medical Center is authorized and empowered to minister to the educational, medical and total needs of those affected by cerebral palsy and other crippling conditions which are amenable to such treatment. The center shall be used to the greatest extent possible for such treatment.

HISTORY:
Laws, 1989, ch. 544, § 153, eff from and after July 1, 1989.

Cross References —
General provision regarding the reorganization of the executive branch of government, see §§ 7-17-1 et seq.

§ 41-11-103. Rules and regulations.

The University of Mississippi Medical Center shall promulgate such rules, regulations and policies as may be necessary and desirable to carry out the programs of the Mississippi Children's Rehabilitation Center.

HISTORY:
Codes, 1942, § 7129-91; Laws, 1956, ch: 308, § 1; Laws, 1968, ch. 437, § 1; Laws, 1972, ch. 322, § 1; Laws, 1981, ch. 498, § 2; Laws, 1989, ch. 544, § 156, eff from and after July 1, 1989.

§ 41-11-104. Repealed.

Repealed by its own terms effective from and after July 1, 1991.
[Laws, 1989, ch. 544, § 155]

Editor's Notes —
Former § 41-11-104 created the Mississippi Children's Rehabilitation Center Advisory Board.

§ 41-11-105. Constructing, erecting, and equipping center.

The state building commission is hereby authorized and empowered to erect, construct, and equip the Mississippi Children's Rehabilitation Center, which shall have as its purpose the treatment and education of persons afflicted with cerebral palsy and other crippling conditions which are amenable to such treatment. The cost of constructing, erecting, and equipping such hospital may be paid from such funds as may be appropriated, or may heretofore have been appropriated, for such purpose by the legislature; and funds which are available to the state building commission or which have been set aside and earmarked for the construction, erection, and equipping of the "Crippled Children's Hospital" under the provisions of Chapter 291, Laws of 1954, or the "Mississippi Hospital School for Cerebral Palsy," under the provisions of Chapter 308, Laws of 1956, are hereby designated and shall be applied to the constructing, erecting and equipping of the Mississippi Children's Rehabilitation Center.

HISTORY:
Codes, 1942, § 7129-92; Laws, 1954, ch. 291, § 1; Laws, 1956, ch. 308, § 2; Laws, 1972, ch. 322, § 2; Laws, 1981, ch. 498, § 3, eff from and after July 1, 1982.

Editor's Notes —
Section 31-11-1 provides that wherever the term "state building commission" or "building commission" appears in the laws of the state of Mississippi, it shall be construed to mean the governor's office of general services. Section 7-1-451, however, provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

§ 41-11-107. Location of center.

The Mississippi Children's Rehabilitation Center shall be located and constructed on the property and in accordance with the plans and specifications previously designated for the "Crippled Children's Hospital," or its successor the "Mississippi Hospital School for Cerebral Palsy," at its location on Lakeland Drive in the vicinity of the Four-Year School of Medicine and University Hospital. It is intended that there shall be cooperation between the center and said Four-Year School of Medicine and University Hospital.

HISTORY:

Codes, 1942, § 7129-93; Laws, 1954, ch. 291, § 2; Laws, 1956 ch. 308, § 3; Laws, 1972, ch. 322, § 3; Laws, 1981, ch. 498, § 4; Laws, 1989, ch. 544, § 157, eff from and after July 1, 1989.

Cross References —

Four-year medical school and university hospital, see §§ 37-115-21 et seq.

§ 41-11-109. Transfer of center to University medical center; education of patients; eligibility for admission.

When the Mississippi Children's Rehabilitation Center has been completed and made ready for occupancy, the buildings and land on which they are located, together with any and all equipment therefor, shall be conveyed and transferred by the State Building Commission to the University of Mississippi Medical Center for the use and benefit of the State of Mississippi in accordance with the provisions of Sections 41-11-101 through 41-11-113. Title to all land, buildings and equipment held by the board of trustees of the Mississippi Hospital School for Cerebral Palsy shall be conveyed to the University of Mississippi Medical Center for the use and benefit of the state in accordance with the provisions of such sections.

The University of Mississippi Medical Center may contract for and obtain the services of the board of education for the purpose of conducting educational programs for children in the Mississippi Children's Rehabilitation Center and all institutions and agencies of the state government are requested and directed to participate and cooperate to the fullest extent authorized by law in rendering assistance towards the rehabilitation and restoration of such cerebral palsy patients and patients with other crippling conditions which are amenable to such treatment.

No member of the family of any member of the board of trustees shall be eligible for treatment in the center. Crippled children shall be admitted to the center insofar as practicable in proportion to the number of such children in the counties of the State of Mississippi, so that all such crippled children shall have equal opportunity for admission to the center.

HISTORY:

Codes, 1942, § 7129-94; Laws, 1954, ch. 291, § 3; 956, ch. 308, § 4; Laws, 1972, ch. 322, § 4; Laws, 1981, ch. 498, § 5; Laws, 1989, ch. 544, § 158, eff from and after July 1, 1989.

Editor's Notes —

Section 41-11-101 referred to in this section was repealed by Laws, 1989, ch. 544, § 154, eff from and after July 1, 1989.

Section 41-11-104, referred to in this section, was repealed by its own terms, effective from and after July 1, 1991.

Section 31-11-1 provides that wherever the term "state building commission" or "building commission" appears in the laws of the State of

Mississippi, it shall be construed to mean the governor's office of general services. Section 7-1-451, however, provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

§ 41-11-111. Acceptance of grants, donations and funds.

The University of Mississippi Medical Center is authorized to accept any and all grants, donations or matching funds from private, public or federal sources in order to add to, improve and enlarge the physical facilities and equipment of the Mississippi Children's Rehabilitation Center. The State Department of Health and the Crippled Children's Service are hereby specifically authorized and empowered to provide crutches, braces and any and all other mechanical devices available and designed for the assistance of those persons afflicted with cerebral palsy and other crippling conditions which are amenable to such treatment.

HISTORY:

Codes, 1942, § 7129-96; Laws, 1956, ch. 308, § 6; Laws, 1972, ch. 322, § 6; Laws, 1981, ch. 498, § 6; Laws, 1989, ch. 544, § 159, eff from and after July 1, 1989.

§ 41-11-113. Declaration of intent; construction.

It is the intent of Sections 41-11-101 through 41-11-113 to change the name of the "Mississippi Crippled Children's Treatment and Training Center" to the Mississippi Children's Rehabilitation Center and to place it under the supervision and control of the University of Mississippi Medical Center. Sections 41-11-101 through 41-11-113 should be construed liberally in order to accomplish the broad objectives in aiding persons afflicted with cerebral palsy and other crippling conditions which are amenable to such treatment, in any and every manner possible by the use of new techniques as they are developed and become known, and by use of the combination of education and medical services for the rehabilitation of such persons.

HISTORY:

Codes, 1942, § 7129-95; Laws, 1956, ch. 308, § 5; Laws, 1972, ch. 322, § 5; Laws, 1981, ch. 498, § 7; Laws, 1989, ch. 544, § 160, eff from and after July 1, 1989.

Editor's Notes —

Section 41-11-101, referred to in this section, was repealed by Laws of 1989, ch. 544, § 154, effective from and after July 1, 1989.

Within sections 41-11-101 through 41-11-113, Section 41-11-104 was repealed by its own terms, effective from and after July 1, 1991.

CHAPTER 13.

COMMUNITY HOSPITALS

In General. 41-13-1
Trust to Insure Against Public Liability Claims. 41-13-101

IN GENERAL

Sec.	
41-13-1 through 41-13-9.	Repealed.
41-13-10.	Definitions.
41-13-11.	Community hospital liability and insurance.
41-13-13.	Repealed.
41-13-15.	Community hospitals and health facilities in counties and municipalities.
41-13-16.	Repealed.
41-13-17.	Repealed.
41-13-19.	Issuance of bonds; election.
41-13-21.	Details of bonds; interest; sale.
41-13-23.	Levy of ad valorem tax or pledge of revenues to pay bonds.
41-13-24.	Obtaining federal assistance.
41-13-25.	Imposition of ad valorem tax; retirement of debt.
41-13-27.	Repealed.
41-13-29.	Board of trustees for county hospitals or other health facilities.
41-13-31 and 41-13-33.	Repealed.
41-13-35.	General powers and duties of trustees; bonds; prohibited acts or behavior of trustees, individual trustee, or agent or servant of trustee.
41-13-36.	Employment of administrator; administrator's powers and duties.
41-13-37.	Repealed.
41-13-38.	Provisions of certain loans by hospital; financial assistance to nonprofit groups.
41-13-39.	Trustees may establish day care centers.
41-13-41.	Repealed.
41-13-43 and 41-13-45.	Repealed.
41-13-47.	Proposed budget; reports.
41-13-49.	Definitions of terms used in this section and Section 41-13-51; applicability of this section and Section 41-13-51; retirement plan administrator to provide certain information to the public, plan participants and plan beneficiaries.
41-13-51.	Contents of summary plan description, annual disclosure of financial and actuarial status, and annual report.
41-13-53.	Benefits with respect to ownership and operation of hospitals organized under other laws.

§§ 41-13-1 through 41-13-9. Repealed.

Repealed by Laws 1982, ch. 395, § 6, eff from and after July 1, 1982.
§ 41-13-1. [Codes, 1930, § 291; 1942, § 2999; Laws, 1930, ch. 58]
§ 41-13-3. [Codes, 1930, § 292; 1942, § 3000; Laws, 1930, ch. 58]
§ 41-13-5. [Codes, 1930, § 292; 1942, § 3000; Laws, 1930, ch. 58]
§ 41-13-7. [Codes, 1930, § 293; 1942, § 3001; Laws, 1930, ch. 58]
§ 41-13-9. [Codes, 1930, § 294; 1942, § 3002; Laws, 1930, ch. 58]

Editor's Notes —

Former § 41-13-1 authorized municipalities to create joint hospitals.

Former § 41-13-3 authorized the creation of a hospital commission for joint hospitals.

Former § 41-13-5 specified the powers and duties of the hospital commission.

Former § 41-13-7 authorized monthly appropriation for hospital purposes.

Former § 41-13-9 specified procedures for the implementation of a community hospital program.

§ 41-13-10. Definitions.

For purposes of Sections 41-13-10 through 41-13-47, the following words shall have the meanings ascribed herein, unless the context otherwise requires:

(a) "Administrator" shall mean the chief administrative official and executive officer of a community hospital selected by the board of trustees of such community hospital.

(b) "Board of trustees" shall mean the board appointed pursuant to Section 41-13-29, to operate a community hospital.

(c) "Community hospital" shall mean any hospital, nursing home and/or related health facilities or programs, including without limitation, ambulatory surgical facilities, intermediate care facilities, after-hours clinics, home health agencies and rehabilitation facilities, established and acquired by boards of trustees or by one or more owners which is governed, operated and maintained by a board of trustees.

(d) "Owner" shall mean any board of supervisors of any county having an ownership interest in any community hospital or leased facility on behalf of the county or on behalf of any supervisors district, judicial district or election district of the county and shall also mean any governing council or board of any municipality having an ownership interest in any community hospital or leased facility.

(e) "Leased facility" shall mean a hospital, nursing home or related health facilities which an owner has leased to an individual, partnership, corporation, other owner or board of trustees for a term not in excess of fifty (50) years, conditioned upon the facility continuing to operate on a nonprofit basis. A leased facility shall not be deemed or considered to be a community hospital except for purposes of Sections 41-13-19 through 41-13-25, and shall not be subject to the statutory requirements placed on community hospitals except to the extent as may be specifically required by the terms of the applicable lease agreement. However, in situations where another community hospital, acting through its board of trustees, is the lessee of a leased facility, the leased facility shall remain subject to this chapter and other laws applicable to community hospitals, except that the owners of the lessee shall have sole authority to appoint the board of trustees for the leased facility, which shall be the same board of trustees as appointed under Section 41-13-29 for the lessee community hospital.

(f) "Service area" means that area as determined by a board of trustees by its patient origin studies.

HISTORY:

Laws, 1985, ch. 511, § 2; Laws, 2002, ch. 441, § 1, eff from and after July 1, 2002.

Editor's Notes —

Laws of 1985, ch. 511, §§ 1, 10, eff from and after July 1, 1985, provide as follows:

"SECTION 1. It is the intent and purpose of this act to clarify and expand the power of boards of trustees of community hospitals so as to allow such community hospitals to operate efficiently, to offer competitive health care services, to respond more effectively to new developments and regulatory changes in the health care area and to continue to serve and promote the health and welfare of the citizens of the State of Mississippi. This act shall be liberally construed so as to give effect to such intent and purpose.

"SECTION 10. This act shall not affect any rights, duties or obligations heretofore granted or imposed by local and private legislation heretofore enacted for the benefit of any owner or community hospital, and the provisions of this act shall be supplemental to and shall not restrict or repeal any general or special authority, powers, rights or privileges with respect to community hospitals heretofore conferred on board of trustees."

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Location of governing body.
3. Community hospital.

1. In general.

Miss. Code Ann. § 41-13-35(5)(n) statutorily empowered community hospital to contract with private physicians in general interest of serving and promoting the health and welfare of the citizens of Mississippi, and a state entity did not lose its status under the Mississippi Tort Claims Act by merely contracting with a private entity; however, the medical center did not meet the statutory definition of a community hospital as it was not governed, operated and maintained by a board of trustees as required by Miss. Code Ann. § 41-13-10(c) for a community hospital. Bolivar Leflore Med. Alliance, LLP v. Williams, 938 So. 2d 1222, 2006 Miss. LEXIS 536 (Miss. 2006).

Even if the language in the contract had been convincing enough to create a private entity and the county hospital had been deemed private, the injured person's claim remained one of premises liability. The agreement did not alter the fact that the county remained the owner of the physical property that comprised the hospital, and includes the sidewalk outside the hospital where the injured person tripped and fell; thus, the trial court did not err in granting summary judgment in favor of the county hospital due to the injured person's claim being filed outside the one-year statute of limitations under Miss. Code Ann. Section 11-46-11(3). Allstadt v. Baptist Mem'l Hosp., 893 So. 2d 1083, 2005 Miss. App. LEXIS 133 (Miss. Ct. App. 2005).

Trial court properly granted summary judgment in favor of county hospital where an individual did not file suit against the hospital until more than two years after tripping on its sidewalk; the hospital was still a community hospital under Miss. Code Ann. § 41-13110(c) even though it had contracted with a private management company to run the hospital. Allstadt v. Baptist Mem. Hosp., 2004 Miss. App. LEXIS 847 (Miss. Ct. App. Aug. 24, 2004), op. withdrawn, sub. op., 893 So. 2d 1083, 2005 Miss. App. LEXIS 133 (Miss. Ct. App. 2005).

Denial of the general hospital's and physicians' motion to transfer venue in a medical malpractice action was improper under the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. § 11-46-1 et seq., where the general hospital was entitled to venue in the county in which the principal offices were located, Miss. Code Ann. § 11-11-3(1), because the decedent's heirs failed to assert a reasonable claim of liability against the medical center and the treating physicians. Wayne Gen. Hosp. v. Hayes, 868 So. 2d 997, 2004 Miss. LEXIS 289 (Miss. 2004).

Municipal hospital was entitled to state action immunity from federal antitrust claim arising from its exclusive contract with medical supervisor, who performed chronic dialysis in its facility for end stage renal disease, as (1) it was subdivision of municipal corporation under §§ 41-13-10 et seq., it was required to obtain certificate of need under § 41-7-191(1)(a) and (b), and it had right under § 41-13-35(5)(g) to contract with any person to provide services, and (2) purpose of its contract to supervise special unit and perform critical functions was to obtain physician's dedicated services by displacing unfettered professional medical freedom, and allegedly anticompetitive results were thus foreseeable. Martin v. Memorial Hosp., 86 F.3d 1391, 1996 U.S. App. LEXIS 16695 (5th Cir. Miss. 1996).

2. Location of governing body.

Trial court abused its discretion in denying a motion by a hospital and three physicians to transfer venue in a medical malpractice action because a decedent's heirs had failed to assert a reasonable claim of liability against certain defendants that had been dismissed from the action and because the hospital was a community hospital under the Mississippi Tort Claims

Act and was entitled to venue in the county in which its governing body's principal offices were located. Wayne Gen. Hosp. v. Hayes, 2003 Miss. LEXIS 598 (Miss. Nov. 6, 2003).

3. Community hospital.

In a case in which a behavioral health limited liability company (LLC) contracted with a community hospital to operate and manage a behavioral unit, and the LLC had not requested a guarantee from the hospital board of trustees (trustees) or the county board of supervisors (supervisors), the simple fact that the hospital was under the direction and control of the trustees and the supervisors did not equate to a responsibility on their part to assume the contractual obligations of the hospital. Sunstone Behavioral Health, LLC v. Covington County Hosp., 2008 U.S. Dist. LEXIS 77381 (S.D. Miss. Aug. 19, 2008).

Where a doctor working in partnership with a community hospital was sued for medical malpractice, the trial court determined that he was entitled to immunity under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-5. The doctor was an employee of the "community hospital" as defined in Miss. Code Ann. § 41-13-10; the community hospital retained control over the medical partnership. Estate of Grimes v. Warrington, 982 So. 2d 365, 2008 Miss. LEXIS 101 (Miss. 2008).

OPINIONS OF THE ATTORNEY GENERAL

Hospital is "leased facility" under Miss. Code Section 41-13-10(e), and is not to be deemed or considered as community hospital except for purposes of Miss. Code Sections 41-13-19 through 41-13-25; hospital is not, therefore, community hospital for purposes of 1993 amendment to Miss. Code Section 41-13-10. 1993 Miss. Op. Att'y Gen. 406.

If board of trustees had established or acquired nursing home prior to closing of hospital, and nursing home was existent when hospital was closed, then board of trustees of hospital would have continued to exist since "community hospital" as defined by 41-13-10(c) had never ceased to exist. 1994 Miss. Op. Att'y Gen. 976.

Section 41-13-35(5)(n) authorizes the Board of Trustees of a community hospital to enter into contracts with an insurance reciprocal established pursuant to and operated in accordance with Section 41-13-10 et seq. 1995 Miss. Op. Att'y Gen. 542.

Community hospitals are governmental entities and are not subject to local privilege taxes. Exum-1998 Miss. Op. Att'y Gen. 323.

A board of supervisors owning a community hospital within the meaning of this section must, if it elects to lease the community hospital without an option to sell, solicit bids therefor by advertisement. 1998 Miss. Op. Att'y Gen. 439.

A county board of supervisors could approve the assignment of a hospital lease from a nonprofit corporation to a for-profit corporation without being subject to the statute as the hospital was operated by a private, nonprofit corporation and was clearly a "leased facility" within the meaning of subsection (e) of this section. 1999 Miss. Op. Att'y Gen. 82.

Certificates of need, licenses and permits, which empower community hospitals to exist and provide various medical services, are necessarily owned by the owners of the community hospital, but are managed and operated by the board of trustees thereof; thus, applications for new certificates of need by an existing community hospital are effectively in the name of the owner but must be made by its board of trustees. 2000 Miss. Op. Att'y Gen. 156.

A community hospital may not exceed the bounds of its service area and, therefore, a county, as the owner of a community hospital, does not have authority to effect the transfer, under the guise of a lease, of a community hospital's assets, including licenses and licensed beds, to a for-profit corporation which will then use those licenses and licensed beds to open an existing, non-licensed hospital facility owned by it in another county not shown to be in its service area. 2002 Miss. Op. Att'y Gen. 273.

A community hospital may not exceed the bounds of its service area. 2002 Miss. Op. Att'y Gen. 371.

Where a community hospital is jointly owned by a city and county, any action which must be exercised by the "owner" of the hospital must be exercised by both the city and the county. 2004 Miss. Op. Att'y Gen. 305.

A county does not have the authority to transfer funds from the nursing home to the county general fund or other funds owed and operated by the county. 2004 Miss. Op. Att'y Gen. 270.

Where a building owned by the county for use by a hospital was damaged by fire, the county might, but was not required to, reimburse the hospital for expenses incurred in repairing damage to the hospital buildings resulting from fire. 2005 Miss. Op. Att'y Gen. 120.

A physician-clinic would be considered a "community hospital" for purposes of Section 41-13-10. 2005 Miss. Op. Att'y Gen. 304.

A separate non-profit corporation or limited liability company formed by a community hospital would not fall within the meaning of "community hospital" as set out in Section 41-13-10(c). 2006 Miss. Op. Att'y Gen. 40.

§ 41-13-11. Community hospital liability and insurance.

(1) [Repealed].

(2) [Repealed].

(3) Subsections (1) and (2) of this section shall stand repealed from and after October 1, 1993.

(4) From and after October 1, 1993, the board of trustees of any community hospital is hereby authorized, in its discretion, to obtain and pay for, out of operating funds of the community hospital, liability insurance of such kinds as said board of trustees deems advisable covering the operation of said community hospital, including trustees, employees and volunteers, and every department thereof, and all machinery, equipment, appliances and motor vehicles thereof or used in connection therewith so as to cover damages or injury to persons or property or both caused by the negligence of any member of said board of trustees or of any officer, director, agent, servant, attorney, employee or volunteer of such hospital while engaged in the performance of his duties or working in connection with the operation of said community hospital. Such insurance shall either be procured from a company or companies authorized to do business and doing business in the State of Mississippi or provided through a program of self insurance established pursuant to the provisions of Section 11-46-17, Mississippi Code of 1972. Such insurance shall be for such amounts of coverage and shall cover such trustees, employees, volunteers, departments, installations, equipment, facilities and activities as the board of trustees, in its discretion, shall determine. The board of trustees may likewise indemnify, either by the purchase of insurance or, directly, where funds are available, in whole or in part, any trustee, officer, director, agent, volunteer or employee of said facility or program for actual personal expenses incurred in the defense of any suit, or judgments resulting from said suit, brought against said trustee, officer, director, agent, volunteer or employee for alleged negligent or wrongful conduct committed while under the employment of or while providing service to a community hospital.

(5) Notwithstanding the authority to purchase or provide liability insurance as provided for in subsection (4) of this section, any community hospital, owner or board of trustees shall be subject to and shall be governed by the provisions of Section 11-46-1 et seq., Mississippi Code of 1972, for any cause of action which accrues from and after October 1, 1993, on account of any wrongful or tortious act or omission of any such governmental entity, as defined in Section 11-46-1, Mississippi Code of 1972, or its employees relating to or in connection with any activity or operation of any community hospital.

HISTORY:

Codes, 1942, § 3002.3; Laws, 1954, ch. 285, §§ 1, 2; Laws, 1982, ch. 395, § 5; Laws, 1983, ch. 468, § 1; Laws, 1984, ch. 495, § 36; Laws, 1984, 1st Ex Sess, ch. 8, § 1; Laws, 1985, ch. 474, § 49; Laws, 1985, ch. 511, § 3; Laws, 1986, ch. 438, § 20; Laws, 1987, ch. 483, § 25; Laws, 1988, ch. 442, § 22; Laws, 1989, ch. 537, § 21;

Laws, 1990, ch. 518, § 22; Laws, 1991, ch. 618, § 21; Laws, 1992, ch. 491 § 22, eff from and after passage (approved May 12, 1992).

Editor's Notes —

Laws of 1985, ch. 511, §§ 1, 10, eff from and after July 1, 1985, provide as follows:

"SECTION 1. It is the intent and purpose of this act to clarify and expand the power of boards of trustees of community hospitals so as to allow such community hospitals to operate efficiently, to offer competitive health care services, to respond more effectively to new developments and regulatory changes in the health care area and to continue to serve and promote the health and welfare of the citizens of the State of Mississippi. This act shall be liberally construed so as to give effect to such intent and purpose.

"SECTION 10. This act shall not affect any rights, duties or obligations heretofore granted or imposed by local and private legislation heretofore enacted for the benefit of any owner or community hospital, and the provisions of this act shall be supplemental to and shall not restrict or repeal any general or special authority, powers, rights or privileges with respect to community hospitals heretofore conferred on board of trustees."

Former subsection (1) of this section, relating to immunity for certain activities in connection with the operation of community hospitals, and subsection (2), relating to liability insurance, were repealed by Laws of 1992, ch. 491, § 22, eff from and after October 1, 1993.

Cross References —

Immunity of state and political subdivisions from liability and suit for torts and torts of its employees, see §§ 11-46-1 et seq.

Liability insurance coverage of public ambulance service, see § 41-55-5.

JUDICIAL DECISIONS

1. In general.

Defense costs eroded a community hospital's insurance policy's coverage limits because (1) the policy so stated, (2) public policy did not bar the provision, as public policy did not bar a defense-within-limits policy, and Miss. Code Ann. §§ 41-13-11 and 11-46-17(3) created no such public policy, and (3) a defense-within-limits clause was not unenforceable for not being placed on the hospital's board's minutes. Fed. Ins. Co. v. Singing River Health Sys., 850 F.3d 187, 2017 U.S. App. LEXIS 3742 (5th Cir. Miss. 2017).

County medical center was a community hospital as defined by Miss. Code Ann. § 41-13-10, therefore it was governed by and afforded the immunity protection of the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 through 11-46-23. Gilchrist v. Veach, 807 So. 2d 485, 2002 Miss. App. LEXIS 79 (Miss. Ct. App. 2002).

A nurse employed by a county hospital was not shielded by immunity under § 41-13-11; no reference is made under any subsection of § 41-13-11 or elsewhere to the existence of immunity for employees of community hospitals, and, in providing for indemnification of employees, the statute clearly anticipates that a judgment may well be rendered against an employee for his or her negligent or wrongful conduct. Sullivan v. Sumrall, 618 So. 2d 1274, 1993 Miss. LEXIS 204 (Miss. 1993).

Section 41-13-11 clearly seeks to exempt county hospitals from liability for actions which may fail to meet a prescribed duty, and the statutory language "notwithstanding that such act or omission may or may not arise out of any activity, transaction or service for which any fee, charge, cost, or other consideration was received or expected to be received in exchange therefor" evinces a clear intent on the part of the legislature to apply the immunity to duties which arise by way of contract; where the legislature has manifested a clear intent to immunize the agencies of the State from suits which arise out of the alleged failures by the agency to fulfill duties implicit in a contractual relationship, that policy will be applied to bar suits in contract as well as in tort. Womble v. Singing River Hosp., 618 So. 2d 1252, 1993 Miss. LEXIS 125 (Miss. 1993), limited, Sparks v. Kim, 701 So. 2d 1113, 1997 Miss. LEXIS 619 (Miss. 1997), limited, Barnes v. Singing River Hosp. Sys., 733 So. 2d 199, 1999 Miss. LEXIS 31 (Miss. 1999).

A community hospital's requirement that its emergency room physicians purchase malpractice insurance did not constitute a waiver of the hospital's tort immunity to the extent of the malpractice coverage carried by its physicians. Womble v. Singing River Hosp., 618 So. 2d 1252, 1993 Miss. LEXIS 125 (Miss. 1993), limited, Sparks v. Kim, 701 So. 2d 1113, 1997 Miss. LEXIS 619 (Miss. 1997), limited, Barnes v. Singing River Hosp. Sys., 733 So. 2d 199, 1999 Miss. LEXIS 31 (Miss. 1999).

A community hospital's adoption of a resolution that it would indemnify employees occupying certain job positions for expenses incurred in defending suits or judgments incurred in suits for negligence arising out of their employment did not constitute a waiver of the hospital's immunity to the extent of the specified indemnification limits. Womble v. Singing

River Hosp., 618 So. 2d 1252, 1993 Miss. LEXIS 125 (Miss. 1993), limited, Sparks v. Kim, 701 So. 2d 1113, 1997 Miss. LEXIS 619 (Miss. 1997), limited, Barnes v. Singing River Hosp. Sys., 733 So. 2d 199, 1999 Miss. LEXIS 31 (Miss. 1999).

Even if a hospital had traditionally used funds from its "excess revenues" account to settle claims and pay judgments pursuant to the authority granted by § 41-13-35(5)(h), such expenditures would not constitute a waiver of immunity with regard to future "excess revenues." Womble v. Singing River Hosp., 618 So. 2d 1252, 1993 Miss. LEXIS 125 (Miss. 1993), limited, Sparks v. Kim, 701 So. 2d 1113, 1997 Miss. LEXIS 619 (Miss. 1997), limited, Barnes v. Singing River Hosp. Sys., 733 So. 2d 199, 1999 Miss. LEXIS 31 (Miss. 1999).

Any immunities protecting State entities will likewise shield the public officials affiliated with them when they are sued in their official capacities; thus, the individual members of the board of trustees of a community hospital were immunized from suit by § 41-13-11's shield of governmental immunity. Womble v. Singing River Hosp., 618 So. 2d 1252, 1993 Miss. LEXIS 125 (Miss. 1993), limited, Sparks v. Kim, 701 So. 2d 1113, 1997 Miss. LEXIS 619 (Miss. 1997), limited, Barnes v. Singing River Hosp. Sys., 733 So. 2d 199, 1999 Miss. LEXIS 31 (Miss. 1999).

Neither decision abolishing judicial doctrine of sovereign immunity nor legislation enacted to replace that doctrine have any bearing on hospital's motion for summary judgment on ground that it is entitled to immunity from suit under § 41-13-11(1) [repealed]. Johnese v. Jefferson Davis Memorial Hospital, 637 F. Supp. 1198, 1986 U.S. Dist. LEXIS 22785 (S.D. Miss. 1986).

OPINIONS OF THE ATTORNEY GENERAL

Section 41-13-11 does not preclude the hospital Board of Trustees from honoring its indemnification obligations simply because the indemnitee has procured insurance in his defense. 1995 Miss. Op. Att'y Gen. 259.

RESEARCH REFERENCES

ALR.

Liability of charitable organization under respondeat superior doctrine for tort of unpaid volunteer. 82 A.L.R.3d 1213.

Hospital's liability for mentally deranged patient's self-inflicted injuries. 36 A.L.R.4th 117.

Hospital's liability for patient's injury or death resulting from escape or attempted escape. 37 A.L.R.4th 200.

Liability of hospital or sanitarium for negligence of physician or surgeon. 51 A.L.R.4th 235.

Malpractice in diagnosis and treatment of male urinary tract and related organs. 48 A.L.R.5th 575.

Liability of health maintenance organizations (HMOs) for negligence of member physicians. 51 A.L.R.5th 271.

Am. Jur.

1B Am. Jur. Pl & Pr Forms (Rev), Agency, Form 224.1 (complaint, petition, or declaration – allegation – against hospital – reliance on apparent authority of physician – hospital held itself out as full service hospital).

13A Am. Jur. Pl & Pr Forms (Rev), Hospitals and Asylums, Forms 41 et seq. (liability for injuries).

19A Am. Jur. Pl & Pr Forms (Rev), Physicians, Surgeons, and Other Healers, Forms 121 et seq. (care of patients; liability for malpractice).

35 Am. Jur. Proof of Facts 2d 75, Hospital's Failure to Prevent Patient from Falling.

43 Am. Jur. Proof of Facts 2d 109, Hospital – Acquired Infections.

25 Am. Jur. Trials 185, Hospital Recovery Room Accidents.

CJS.

41 C.J.S., Hospitals § 1.

§ 41-13-13. Repealed.

Repealed by Laws, 1982, ch. 395, § 6, eff from and after July 1, 1982. [Codes, 1942, § 3002.5; Laws, 1956, ch. 309, §§ 1, 2]

Editor's Notes —

Former § 41-13-13 authorized the construction of hospitals in certain counties under the Hill-Burton Act.

§ 41-13-15. Community hospitals and health facilities in counties and municipalities.

(1) Any county and/or any political or judicial subdivision of a county and/or any municipality of the State of Mississippi, acting individually or jointly, may acquire and hold real estate for a community hospital either recognized and/or licensed as such by either the State of Mississippi or the United States Government, and may, after complying with applicable health planning and licensure statutes, construct a community hospital thereon and/or appropriate funds according to the provisions of this chapter for the construction, remodeling, maintaining, equipping, furnishing and expansion of such facilities by the board of trustees upon such real estate.

(2) Where joint ownership of a community hospital is involved, the owners are hereby authorized to contract with each other for determining the pro rata ownership of such community hospital, the proportionate cost of maintenance and operation, and the proportionate financing that each will contribute to the community hospital.

(3) The owners may likewise contract with each other, or on behalf of any subordinate political or judicial subdivision, or with the board of trustees of a community hospital, and/or any agency of the State of Mississippi or the United States Government, for necessary purposes related to the establishment, operation or maintenance of community hospitals and related programs wherever located, and may either accept from, sell or contribute to the other entities, monies, personal property or existing health facilities. The owners or the board of trustees may also receive monies, property or any other valuables of any kind through gifts, donations, devises or other recognized means from any source for the purpose of hospital use.

(4) Owners and boards of trustees, acting jointly or severally, may acquire and hold real estate for offices for physicians and other health-care practitioners and related health care or support facilities, provided that any contract for the purchase of real property must be ratified by the owner, and may thereon construct and equip, maintain and remodel or expand such offices and related facilities, and the board of trustees may lease same to members of the hospital staff or others at a rate deemed to be in the best interest of the community hospital.

(5) If any political or judicial subdivision of a county is obligated hereunder, the boundaries of such district shall not be altered in such a manner as to relieve any portion thereof of its obligation hereunder.

(6) Owners may convey to any other owner any or all property, real or personal, comprising any existing community hospital, including related facilities, wherever located, owned by such conveying owner. Such conveyance shall be upon such terms and conditions as may be agreed upon and may make such provisions for transfers of operating funds and/or for the assumption of liabilities of the community hospital as may be deemed appropriate by the respective owners.

(7)(a) Except as provided for in subsection (11) of this section, owners may lease all or part of the property, real or personal, comprising a community hospital, including any related facilities, wherever located, and/or assets of such community hospital, to any individual, partnership or corporation, whether operating on a nonprofit basis or on a profit basis, or to the board of trustees of such community hospital or any other owner or board of trustees, subject to the applicable provisions of subsections (8), (9) and (10) of this section. The term of such lease shall not exceed fifty (50) years. Such lease shall be conditioned upon (i) the leased facility continuing to operate in a manner safeguarding community health interests; (ii) the proceeds from the lease being first applied against such bonds, notes or other evidence of indebtedness as are issued pursuant to Section 41-13-19 as and when they are due, provided that the terms of the lease shall cover any indebtedness pursuant to Section 41-13-19; and (iii) any surplus proceeds from the lease being deposited in the general fund of the owner, which proceeds may be used for any lawful purpose. Such lease shall be subject to the express approval of the board of trustees of the community hospital, except in the case where the board of trustees of the community hospital will be the lessee. However, owners may not lease any community hospital to the University of Mississippi Medical Center unless first the University of Mississippi Medical Center has obtained authority to lease such hospital under specific terms and conditions from the Board of Trustees of State Institutions of Higher Learning.

If the owner wishes to lease a community hospital without an option to sell it and the approval of the board of trustees of the community hospital is required but is not given within thirty (30) days of the request for its approval by the owner, then the owner may enter such lease as described herein on the following conditions: A resolution by the owner describing its intention to enter such lease shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in the county or city, as the case may be, or if none be so published, in a newspaper having a general circulation therein. The first publication of such notice shall be made not less than twenty-one (21) days prior to the date fixed in such resolution for the lease of the community hospital and the last publication shall be made not more than seven (7) days prior to such date. If, on or prior to the date fixed in such resolution for the lease of the community hospital, there shall be filed with the clerk of the owner a petition signed by twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified voters of such owner, requesting that an election be called and held on the question of the lease of the community hospital, then it shall be the duty of the owner to call and provide for the holding of an election as petitioned for. In such case, no such lease shall be entered into unless authorized by the affirmative vote of the majority of the qualified voters of such owner who vote on the proposition at such election. Notice of such election shall be given by publication in like manner as hereinabove provided for the publication of the initial resolution. Such election shall be conducted and the return thereof made, canvassed and declared as nearly as may be in like manner as is now or may hereafter be provided by law in the case of general elections in such owner. If, on or prior to the date fixed in the owner's resolution for the lease of the community hospital, no such petition as described above is filed with the clerk of the owner, then the owner may proceed with the lease subject to the other requirements of this section. Subject to the above conditions, the lease agreement shall be upon such terms and conditions as may be agreed upon and may make such provision for transfers of tangible and intangible personal property and operating funds and/or for the assumption of liabilities of the community hospital and for such lease payments, all as may be deemed appropriate by the owners.

(b) Owners may sell and convey all or part of the property, real or personal, comprising a community hospital, including any related facilities, wherever located, and/or assets of such community hospital, to any individual, partnership or corporation, whether operating on a nonprofit basis or on a profit basis, or to the board of trustees of such community hospital or any other owner or board of trustees, subject to the applicable provisions of subsections (8) and (10) of this section. Such sale and conveyance shall be upon such terms and conditions as may be agreed upon by the owner and the purchaser that are consistent with the requirements of this section, and the parties may make such provisions for the transfer of operating funds or for the assumption of liabilities of the facility, or both, as they deem appropriate. However, such sale and conveyance shall be conditioned upon (i) the facility continuing to operate in a manner safeguarding community health interests; (ii) the proceeds from such sale being first applied against such bonds, notes or other evidence of indebtedness as are issued pursuant to Section 41-13-19 as and when they are due, provided that the terms of the sale shall cover any indebtedness pursuant to Section 41-13-19; and (iii) any surplus proceeds from the sale being deposited in the general fund of the owner, which proceeds may be used for any lawful purpose. However, owners may not sell or convey any community hospital to the University of Mississippi Medical Center unless first the University of Mississippi Medical Center has obtained authority to purchase such hospital under specific terms and conditions from the Board of Trustees of State Institutions of Higher Learning.

(8) Whenever any owner decides that it may be in its best interests to sell or lease a community hospital as provided for under subsection (7) of this section, the owner shall first contract with a certified public accounting firm, a law firm or competent professional health care or management consultants to review the current operating condition of the community hospital. The review shall consist of, at minimum, the following:

(a) A review of the community's inpatient facility needs based on current workload, historical trends and projections, based on demographic data, of future needs.

(b) A review of the competitive market for services, including other hospitals which serve the same area, the services provided and the market perception of the competitive hospitals.

(c) A review of the hospital's strengths relative to the competition and its capacity to compete in light of projected trends and competition.

(d) An analysis of the hospital's options, including service mix and pricing strategies. If the study concludes that a sale or lease should occur, the study shall include an analysis of which option would be best for the community and how much revenues should be derived from the lease or sale.

(9) After the review and analysis under subsection (8) of this section, an owner may choose to sell or lease the community hospital. If an owner chooses to sell such hospital or lease the hospital with an option to sell it, the owner shall follow the procedure specified in subsection (10) of this section. If an owner chooses to lease the hospital without an option to sell it, it shall first spread upon its minutes why such a lease is in the best interests of the persons living in the area served by the facility to be leased, and it shall make public any and all findings and recommendations made in the review required under proposals for the lease, which shall state clearly the minimum required terms of all respondents and the evaluation process that will be used when the owner reviews the proposals. The owner shall lease to the respondent submitting the highest and best proposal. In no case may the owner deviate from the process provided for in the request for proposals.

(10) If an owner wishes to sell such community hospital or lease the hospital with an option to sell it, the owner first shall conduct a public hearing on the issue of the proposed sale or lease with an option to sell the hospital. Notice of the date, time, location and purpose of the public hearing shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in the county or city, as the case may be, or if none be so published, in a newspaper having a general circulation therein. The first publication of the notice shall be made not less than twenty-one (21) days before the date of the public hearing and the last publication shall be made not more than seven (7) days before that date. If, after the public hearing, the owner chooses to sell or lease with an option to sell the hospital, the owner shall adopt a resolution describing its intention to sell or lease with an option to sell the hospital, which shall include the owner's reasons why such a sale or lease is in the best interests of the persons living in the area served by the facility to be sold or leased. The owner then shall publish a copy of the resolution; the requirements for proposals for the sale or lease with an option to sell the hospital, which shall state clearly the minimum required terms of all respondents and the evaluation process that will be used when the owner reviews the proposals; and the date proposed by the owner for the sale or lease with an option to sell the hospital. Such publication shall be made once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in the county or city, as the case may be, or if none be so published, in a newspaper having a general circulation therein. The first publication of the notice shall be made not less than twenty-one (21) days before the date proposed for the sale or lease with an option to sell the hospital and the last publication shall be made not more than seven (7) days before that date. If, on or before the date proposed for the sale or lease of the hospital, there is filed with the clerk of the owner a petition signed by twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified voters of the owner,

requesting that an election be called and held on the question of the sale or lease with an option to sell the hospital, then it shall be the duty of the owner to call and provide for the holding of an election as petitioned for. In that case, no such sale or lease shall be entered into unless authorized by the affirmative vote of the majority of the qualified voters of the owner who vote on the proposition at such election. Notice of the election shall be given by publication in the same manner as provided for the publication of the initial resolution. The election shall be conducted and the return thereof made, canvassed and declared in the same manner as provided by law in the case of general elections in the owner. If, on or before the date proposed for the sale or lease of the hospital, no such petition is filed with the clerk of the owner, then the owner may sell or lease with an option to sell the hospital. Such sale or lease shall be made to the respondent submitting the highest and best proposal. In no case may the owner deviate from the process provided for in the request for proposals.

(11) A lessee of a community hospital, under a lease entered into under the authority of Section 41-13-15, in effect prior to July 15, 1993, or an affiliate thereof, may extend or renew such lease whether or not an option to renew or extend the lease is contained in the lease, for a term not to exceed fifteen (15) years, conditioned upon (a) the leased facility continuing to operate in a manner safeguarding community health interest; (b) proceeds from the lease being first applied against such bonds, notes or other evidence of indebtedness as are issued pursuant to Section 41-13-19; (c) surplus proceeds from the lease being used for health related purposes; (d) subject to the express approval of the board of trustees of the community hospital; and (e) subject to the express approval of the owner. If no board of trustees is then existing, the owner shall have the right to enter into a lease upon such terms and conditions as agreed upon by the parties. Any lease entered into under this subsection (11) may contain an option to purchase the hospital, on such terms as the parties shall agree.

HISTORY:

Codes, 1942, § 7129-50; Laws, 1944, ch. 277, § 1; Laws, 1946, ch. 412, § 1; Laws, 1948, ch. 435, § 1; Laws, 1954, ch. 294, § 1; Laws, 1958, ch. 356; Laws, 1960, ch. 353; Laws, 1962, ch. 401; Laws, 1966, ch. 461, § 1; Laws, 1968, ch. 442, § 1; Laws, 1972, ch. 321, § 1; ch. 494, § 1; Laws, 1973, ch. 442, § 1; Laws, 1974, ch. 487; Laws, 1977, ch. 389; Laws, 1979, ch. 463; Laws, 1982, ch. 395, § 1; Laws, 1985, ch. 511, § 4; Laws, 1987, ch. 494; Laws, 1988, ch. 387; Laws, 1989, ch. 426, § 1; Laws, 1990, ch. 383, § 1; Laws, 1992, ch. 551 § 1; Laws, 1993, ch. 535, § 1; Laws, 1994, ch. 546, § 1, eff from and after July 1, 1994.

Editor's Notes —

Laws of 1985, ch. 511, §§ 1, 10, eff from and after July 1, 1985, provide as follows:

"SECTION 1. It is the intent and purpose of this act to clarify and expand the power of boards of trustees of community hospitals so as to allow such community hospitals to operate efficiently, to offer competitive health care services, to respond more effectively to new developments and regulatory changes in the health care area and to continue to serve and promote the health and welfare of the citizens of the State of Mississippi. This act shall be liberally construed so as to give effect to such intent and purpose.

"SECTION 10. This act shall not affect any rights, duties or obligations heretofore granted or imposed by local and private legislation heretofore enacted for the benefit of any owner or community hospital, and the provisions of this act shall be supplemental to and shall not restrict or repeal any general or special authority, powers, rights or privileges with respect to community hospitals heretofore conferred on board of trustees."

On July 15, 1993, the United States Attorney

General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1993, ch. 535, § 1.

Cross References —

Exercise of power of eminent domain, generally, see §§ 11-27-1 et seq.

Municipal power to establish and maintain hospitals, see §§ 21-17-1, 21-19-5, 21-19-7.

Regulation of hospitals, see §§ 41-9-1 et seq.

Immunity of entities operating hospitals created under this section, liability insurance and waiver of immunity, see § 41-13-11.

Provision that terms of lease of community hospital or any of its assets shall cover any indebtedness under this section, see § 41-13-15.

Authorization for ad valorem tax supporting facilities and services established under provisions of §§ 41-13-15 through 41-13-51, see § 41-13-25.

Power of the board of trustees of a hospital to appoint the administrator, superintendent or other chief officer of the hospital, see § 41-13-35.

Authority of boards of trustees of community hospitals to contract with the Mississippi Hospital Equipment and Facilities Authority for financing or refinancing of hospital equipment or facilities, see § 41-73-47.

Institutions for the aged and infirm, see §§ 43-11-1 et seq.

JUDICIAL DECISIONS

1. In general.

Liberal construction of Miss. Code Ann. § 41-13-15 is appropriate. Corporate Mgmt. v. Greene County, 23 So. 3d 454, 2009 Miss. LEXIS 600 (Miss. 2009).

Interpreting the statute liberally, the trial court properly found that the county was in compliance with the RFP requirements of § 41-13-15(7). Corporate Mgmt. v. Greene County, 23 So. 3d 454, 2009 Miss. LEXIS 600 (Miss. 2009).

A hospital which was jointly owned by a city and a hospital district, and was governed by a board of trustees jointly appointed by the city council and the county board of supervisors, was a "subdivision [of the state] or municipal corporation thereof" within the meaning and contemplation of Art 4, § 104 of the Mississippi Constitution and § 15-1-51. Thus, the 7-year period of limitations governing judgment liens set forth in § 15-1-47 was inoperative against the hospital. Enroth v. Memorial Hosp. at Gulfport, 566 So. 2d 202, 1990 Miss. LEXIS 432 (Miss. 1990).

A local law authorizing a city to issue bonds for the purpose of acquiring hospital facilities to be leased to a non-profit corporation provided an alternative to the method of acquiring hospitals provided by general law and did not suspend the general law, as prohibited by Mississippi Constitution, Article 4, § 87; thus, Mississippi Constitution, Article 4, § 89 was applicable. In re Validation of $15,000,000 Hospital Revenue Bonds etc., 361 So. 2d 44, 1978 Miss. LEXIS 2343 (Miss. 1978).

Trustees of a community hospital jointly owned by Prentiss County and the City of Booneville did not have the authority under this section to expend public funds to convert the hospital nurses' quarters into a private doctor's offices and to lease these converted facilities to a doctor engaged in private practice. Competing physicians, as taxpayers, had standing to bring suit to enjoin the trustees from leasing the offices to the private physician. Prichard v. Cleveland, 314 So. 2d 729, 1975 Miss. LEXIS 1684 (Miss. 1975).

Under this section [Code 1942, § 7129-50], city is authorized, without violating § 183 of Constitution, prohibiting donations to individuals or private corporations, to contribute lots to supervisors' districts for the establishment of a community hospital. City of Indianola v. Sunflower County, 209 Miss. 116, 46 So. 2d 81, 1950 Miss. LEXIS 367 (Miss. 1950).

Seeking and effecting co-operation of other agencies as authorized by the statute is a matter within the discretion of the board, and is not a prerequisite to the issuance of the bonds on behalf of the two districts constituting the hospital area. Board of Sup'rs v. State, 206 Miss. 443, 40 So. 2d 273, 1949 Miss. LEXIS 272 (Miss. 1949).

OPINIONS OF THE ATTORNEY GENERAL

When all legal requirements for establishment, operation and designation of service area of home health agency were fully complied with and agency had acquired all proper certificates and/or permits required by law and was in compliance with all applicable state and federal laws and regulations, city did have legal authority to continue as owner of Home Health Agency and operate agency in its multi-county service area. 1994 Miss. Op. Att'y Gen. 84.

The review and analysis conducted under Section 41-13-15(8) should provide enough information for owners to make a decision concerning which option would be best for the community. 1995 Miss. Op. Att'y Gen. 631.

Based on the facts, if property is a leased facility rather than a community hospital, then the board would not be subject to the statutory requirements of Section 41-13-15 when selling the property. The Board of Supervisors may sell the property in the manner provided for in Sections 19-7-3 and 19-7-5. 1996 Miss. Op. Att'y Gen. 521.

If, after the review required by subsection eight of this section is carried out, the owner a hospital determines that it is in the best interest of the community that the hospital be leased to a nonprofit entity and that such arrangement would better serve the health care needs of the community, it is within the power of the owner, acting in connection with the hospital board of trustees, to limit proposals to lease to such nonprofit entities. 1997 Miss. Op. Att'y Gen. 772.

A board of supervisors owning a community hospital within the meaning of this section must, if it elects to lease the community hospital without an option to sell, solicit bids therefor by advertisement. 1998 Miss. Op. Att'y Gen. 439.

Pursuant to subsection (7) of this section, and subject to the applicable provisions of subsections (8), (9), and (10) of this section, a lease or sale of a community hospital may be made under such terms and conditions as may be agreed upon by the owner and purchaser or lessee, and shall be conditioned, in part, upon the facility operating in a manner safeguarding community health interests; further, the terms of a proposed lease or sale may include a provision for reverter of the hospital to the municipality/owner in the event that the hospital ceases to operate as a hospital. 1999 Miss. Op. Att'y Gen. 7.

A county board of supervisors could approve the assignment of a hospital lease from a nonprofit corporation to a for profit corporation without being subject to this section as the hospital was operated by a private, nonprofit corporation and was clearly a "leased facility" within the meaning of 41-13-10 (e). 1999 Miss. Op. Att'y Gen. 82.

If a lease of a county owned hospital was entered into under authority of this section and prior to July 15, 1993, then the county could negotiate a lease renewal without advertising and could include therein an option to purchase. 1999 Miss. Op. Att'y Gen. 48.

A board of trustees of a community hospital may convey real property owned by the hospital to the board of supervisors of the county in which the hospital is located. 1999 Miss. Op. Att'y Gen. 218.

Sections 41-13-15 through 41-13-53 do not authorize the execution of a deed of trust or mortgage upon community hospital real property as collateral for borrowings. 1999 Miss. Op. Att'y Gen. 218.

Subsection (11) of this section permits a board of supervisors, which has permitted the sublease of a community hospital from the original lessor to a sublessee, to negotiate with the sublessee, without advertising, for a renewal or extension of the original lease not to exceed 15 years upon compliance with the provisions of that subsection. 1999 Miss. Op. Att'y Gen. 248.

A county board of supervisors may create a nonprofit corporation and serve as the sole member thereof and may fund such corporation from the surplus proceeds of a sale or lease of a community hospital owned by the county, when the funds are expended by the corporation to improve the quality of health care provided to citizens and residents of the county, and providing instruction on the improvement of personal health. 1999 Miss. Op. Att'y Gen. 370.

A county board of supervisors had the authority to lease a hospital or to sell or lease with an option to sell, provided all applicable requirements of the statute were satisfied prior to such transaction. 2000 Miss. Op. Att'y Gen. 674.

With regard to the lease of a hospital, a county board of supervisors was required to make appropriate findings upon the minutes that the terms of any lease that were agreed upon between the board and the lessee (a nonprofit corporation) were appropriate, considering the intent to continue the provision of health care services to the community. 2000 Miss. Op. Att'y Gen. 674.

The owners of a community hospital could not adopt criteria and minimum requirements in a request for proposals under subsection (7) that would limit the respondents only to a nonprofit corporation that had as its sole member the board of the hospital. 2000 Miss. Op. Att'y Gen. 36.

The statute permits the inclusion of an option to purchase in an extension or renewal of a lease of a community hospital if the lease was in effect prior to July 15, 1993 and, therefore, a county board of supervisors could amend an existing lease agreement, as extended, to include an option to purchase clause with the existing lessee, thereby allowing the board to negotiate and sell the hospital without the necessity of advertisement for bids. Lee, Jr., 2000 Miss. Op. Att'y Gen. 98.

The owners of a community hospital could not adopt criteria and minimum requirements in a request for proposals under subsection (7) that would limit respondents to a nonprofit corporation that had as its sole member the board of the hospital since such action would be completely anticompetitive and thwart the legislative intent of the statute. 2000 Miss. Op. Att'y Gen. 114.

Certificates of need, licenses and permits, which empower community hospitals to exist and provide various medical services, are necessarily owned by the owners of the community hospital, but are managed and operated by the board of trustees thereof; thus, applications for new certificates of need by an existing community hospital are effectively in the name of the owner but must be made by its board of trustees. 2000 Miss. Op. Att'y Gen. 156.

A community hospital may not exceed the bounds of its service area and, therefore, a county, as the owner of a community hospital, does not have authority to effect the transfer, under the guise of a lease, of a community hospital's assets, including licenses and licensed beds, to a for-profit corporation which will then use those licenses and licensed beds to open an existing, non-licensed hospital facility owned by it in another county not shown to be in its service area. 2002 Miss. Op. Att'y Gen. 273.

Surplus proceeds from the sale of a nursing home owned by a county should be placed in the county's general fund and the county may then use those funds for any lawful purpose for which general funds may be expended: note that a county may not expend general fund monies for the purpose of maintaining or constructing county or municipal roads. 2003 Miss. Op. Att'y Gen. 736.

Owners of a community hospital have the statutory authority to enter into a lease with a private company. 2004 Miss. Op. Att'y Gen. 10.

Interpretation of the phrase "date proposed for the sale" as being the date established in the notice that proposals are to be received is logical and consistent with the purposes of the law. 2004 Miss. Op. Att'y Gen. 305.

For the limited purposes of conducting the election provided for in subsection (10) of this section, the county and the city should be viewed as one owner. 2004 Miss. Op. Att'y Gen. 305.

Petitions calling for an election on the question of the sale of a community hospital must be filed on or before the date the proposals for purchase of the hospital are received by the owner(s). 2004 Miss. Op. Att'y Gen. 305.

This office is of the opinion that the board of trustees of a community hospital may separately or jointly contract for the lease of hospital property which will be used as the site of a specialized healthcare facility. Opinion duplicated in Brown, Apr. 2, 2004, A.G. Op.04-0131.2004 Miss. Op. Att'y Gen. 139.

This office is of the opinion that the board of trustees of a community hospital may separately or jointly contract for the lease of hospital property which will be used as the site of a specialized healthcare facility. Opinion duplicated in Sneed, Apr. 9, 2004, A.G. Op. 04-0139.2004 Miss. Op. Att'y Gen. 131.

A county has the authority to perform work on county property used by a public community hospital and operated by a duly appointed board of trustees of the hospital. 2004 Miss. Op. Att'y Gen. 374.

If the board of supervisors, as owner of the community hospital, and the board of trustees, who operate and govern the hospital, agree to such a name change then the name of the hospital may be changed. 2004 Miss. Op. Att'y Gen. 366.

A publically owned county hospital may enter into written "mutual aid" agreements for temporary loans of hospital equipment to for-profit private facilities in the area for emergency health use, provided that, each temporary loan of equipment is approved by the hospital director. 2004 Miss. Op. Att'y Gen. 373.

Under Section 33-21-1(a) [33-1-21(a)], the fifteen-day annual maximum on military leave applies to a county employee, including an employee of a community hospital or county nursing home established pursuant to Section 41-13-15. 2005 Miss. Op. Att'y Gen. 64.

Section 41-13-15(11) permits the inclusion of an option to purchase in a renewal of a community hospital lease which was in effect prior to July 15, 1993. Pursuant to the option to purchase, the county may then negotiate and sell the hospital without necessity of advertising for bids or otherwise complying with Sections 41-13-15(7), (8), (9) or (10). 2005 Miss. Op. Att'y Gen. 436.

A county may amend an existing lease of a hospital to include an option for sale to the lessee on mutually agreeable terms, and, upon amendment, the county may negotiate and sell the hospital to the lessee without necessity of advertisement for bids or compliance with Sections 41-13-15(7), (8), (9) and (10). 2006 Miss. Op. Att'y Gen. 52.

In regard to the sale or lease of the facilities currently used as a nursing home and hospital, in reviewing all of the proposals, the county must accept the "highest and best," but in no event may it accept terms less than those which were set out in the proposal. 2006 Miss. Op. Att'y Gen. 54.

If a board of supervisors makes a factual determination that a community hospital has ceased to use its building, and the board of trustees, if any, have dissolved and the board of supervisors is undertaking or has concluded the process of paying the debts of the hospital, then there would be no contemporaneously existent hospital and the board would not need to comply with Section 41-13-15 in the event of a sale. 2006 Miss. Op. Att'y Gen. 262.

A municipal corporation is a corporation within the meaning of Section 41-13-15, and, accordingly, a city authorized to purchase property under that statute. 2006 Miss. Op. Att'y Gen. 262.

RESEARCH REFERENCES

ALR.
Licensing and regulation of nursing or rest homes. 97 A.L.R.2d 1187.

Am. Jur.
40A Am. Jur. 2d, Hospitals and Asylums § 4.

CJS.
41 C.J.S., Hospitals §§ 2, 3, 15–17.

§ 41-13-16. Repealed.

Repealed by Laws, 1980, ch. 456, eff from and after July 1, 1980.
[Laws, 1972, ch. 321 § 1; Laws, 1972, 494, § 1; Laws, 1973, ch. 442 § 1]

Editor's Notes —
Former § 41-13-16 authorized the establishment and operation of joint hospital laundry facilities.

§ 41-13-17. Repealed.

Repealed by Laws, 1982, ch. 395, § 6, eff from and after July 1, 1982.

[Codes, 1942, § 7129-50; Laws, 1944, ch. 277, § 1; Laws, 1946, ch. 412, § 1; Laws, 1948, ch. 435, § 1; Laws, 1954, ch. 294, § 1; Laws, 1958, ch. 356; Laws, 1960, ch. 353; Laws, 1962, ch. 401; Laws, 1966, ch. 461, § 1; Laws, 1968, ch. 442, § 1; Laws, 1981, ch. 484, § 17]

Editor's Notes —
Former § 41-13-17 directed political subdivisions to cooperate with nonprofit corporations with respect to construction or operation of hospitals.

§ 41-13-19. Issuance of bonds; election.

Such counties, cities and towns, supervisors districts, judicial districts and election districts of a county are authorized and empowered to make appropriations of the funds thereof for the purpose of Sections 41-13-15 through 41-13-51, and are hereby authorized and empowered to issue and sell the bonds, notes or other evidences of indebtedness thereof, for the purpose of providing funds with which to acquire real estate for and to establish, erect, build, construct, remodel, add to, acquire, equip and furnish community hospitals, nurses' homes, health centers, health departments, diagnostic or treatment centers, rehabilitation facilities, nursing homes and related facilities under the provisions of such sections. Such bonds, notes or other evidences of indebtedness secured by a pledge of the full faith, credit, and resources of the issuing entity shall not be issued in an amount which will exceed the limit of indebtedness of the county, city, town, supervisors district, judicial district or election district issuing the same, as such limit is prescribed by Sections 19-9-1 et seq., and Sections 21-33-301 et seq., Mississippi Code of 1972.

Before issuing any such bonds, notes or other evidences of indebtedness secured by a pledge of the full faith, credit, and resources of the issuing entity, the board of supervisors, acting for a county or supervisors district, judicial district or election district thereof, or the mayor and board of aldermen, or city council, or other like governing body, acting for a city or town, shall adopt a resolution declaring its intention to issue the same, stating the amount and purposes thereof, whether such hospital, nurses' home, health center, health department, diagnostic or treatment center, rehabilitation facility, nursing home or related facilities are to be erected, acquired, remodeled, equipped, furnished, maintained and operated by such county, city, town or supervisors district separately, or jointly with one or more other counties, cities, towns, supervisors districts, judicial districts or election districts of a county, and fixing the date upon which further action will be taken to provide for the issuance of such bonds, notes or other evidences of indebtedness. The full text of such resolution shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in the county or city, as the case may be, or if none be so published, in a newspaper having a general circulation therein. The first publication of such notice shall be made not less than twenty-one (21) days prior to the date fixed in such resolution, as aforesaid, and the last publication shall be made not more than seven (7) days prior to such date. If, on or prior to the date fixed in such resolution, as aforesaid, there shall be filed with the clerk of the body by which such resolution was adopted a petition signed by twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified voters of such county, city, town, supervisors district, judicial district or election district, as the case may be, requesting that an election be called and held on the question of the issuance of such bonds, notes or other evidences of indebtedness, then it shall be the duty of the board of supervisors, board of aldermen, city council, or other governing body, as the case may be, to call and provide for the holding of an election as petitioned for. In such case no such bonds, notes or other evidences of indebtedness secured by a pledge of the full faith, credit, and resources of the issuing entity shall be issued unless authorized by the affirmative vote of a majority of the qualified voters of such county, city, town, supervisors district, judicial district or election district, as the case may be, who vote on the proposition at such election. Notice of such election shall be given by publication in like manner as hereinabove provided for the publication of the initial resolution. Such election shall be conducted and the return thereof made, canvassed and declared as nearly as may be in like manner as is now or may hereafter be provided by law in the case of general elections in such county, city, town, supervisors district, judicial district or election district.

In the discretion of the board of supervisors, board of aldermen, city council, or other governing body, as the case may be, and after adoption of a resolution declaring its intention to issue such bonds, notes or other evidences of indebtedness secured by a pledge of the full faith, credit, and resources of the issuing entity, an election on the question of the issuance of such bonds, notes or other evidences of indebtedness may be called and held as hereinabove provided without the necessity of publishing said resolution and whether or not a protest to the issuance be filed with the clerk of the governing body. In the event that the question of the issuance of such bonds, notes or other evidences of indebtedness secured by a pledge of the full faith, credit, and resources of the issuing entity be not authorized at such election, such question shall not again be submitted to a vote until the expiration of a period of six (6) months from and after the date of such election.

In the event of any joint operation or proposed joint operation as provided by Section 41-13-15, there shall be separate bond issues, and the board or boards of supervisors acting for a county, supervisors district, judicial district or election district, the governing bodies of the municipality or municipalities, as the case may be, shall each issue the bonds, notes, or other evidences of indebtedness of the county, town, city, supervisors district, judicial district or election district, or districts, in such amounts as having been agreed upon by the respective boards of supervisors and governing bodies of the towns or cities, and in so doing follow and comply with the provisions of Sections 41-13-19 through 41-13-23.

HISTORY:

Codes, 1942, § 7129-51; Laws, 1944, ch. 277, § 2; Laws, 1946, ch. 412, § 2; Laws, 1948, ch. 435, § 2; Laws, 1954, ch. 294, § 2; Laws, 1966, ch. 459, § 1; Laws, 1968, ch. 442, § 2; Laws, 1970, ch. 321, § 1; Laws, 1972, ch. 447, § 1, eff from and after passage (approved May 5, 1972).

Editor's Notes —

Section 41-13-51 referred to in this section was repealed by Laws of 1982, ch. 395, § 6, eff from and after July 1, 1982.

Cross References —

General authority to issue bonds, see §§ 19-9-1 et seq.

County debt limitation, see §§ 19-9-5, 31-15-5.

Municipal debt limitation, see § 21-33-303.

Depository for county and municipal hospital funds, see § 27-105-365.

Provision that leased facility shall not be deemed a community hospital except for purposes of sections 41-13-19 through 41-13-25, see § 41-13-10.

Interest on community hospital bonds and details and sale of bonds, see § 41-13-21.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Notice of intention to issue bonds.
3. Effect of election.

1. In general.

Validation proceedings are the exclusive remedy for raising objections in connection with the issuance and sale of bonds, except those which could be or should be raised before the board of supervisors or municipal authorities, and such objections cannot be properly raised in a suit for an injunction. Chambers v. Perry, 183 So. 2d 645, 1966 Miss. LEXIS 1432 (Miss. 1966).

Order of board of supervisors of county properly entered on its minutes for issuing bonds "for the purpose of providing funds with which to acquire real estate for, and to establish, erect, build, construct, acquire, equip, furnish and operate a county community hospital, nurses' home and related facilities, for and within the limits of Tishomingo County," is valid order which cannot be made invalid by stipulation of attorneys filed in hearing of protest against bond issue that supervisors had agreed to use part of bond issue for purposes of health center at Belmont while hospital was to be built at Iuka, as attorneys cannot, by stipulation, amend orders of board of supervisors, or bind taxpayers of county. Board of Sup'rs v. Dawson, 208 Miss. 666, 45 So. 2d 253, 1950 Miss. LEXIS 283 (Miss. 1950).

Where resolution of board of supervisors authorizing bond issue for hospital provided a rate of interest amounting to 2.897938%, when premium of $11.00 was included, or 2.899031%, when premium was not included, resolution did not provide greater rate of interest than that stipulated in buyers' bid, that is, an average interest cost of 2.90% and bonds were not void on that ground. Board of Sup'rs v. Dawson, 208 Miss. 666, 45 So. 2d 253, 1950 Miss. LEXIS 283 (Miss. 1950).

Even if coupons on bonds issued under this section [Code 1942, § 7129-51] exceed the bids, this is not sufficient to avoid bond issue. Board of Sup'rs v. Dawson, 208 Miss. 666, 45 So. 2d 253, 1950 Miss. LEXIS 283 (Miss. 1950).

2. Notice of intention to issue bonds.

A resolution adopted by a county board of supervisors pursuant to this section was not fatally defective for failing to state whether the planned nursing home was to be run by the county alone or jointly with some other political subdivision where it was clear from the resolution's provisions regarding the issuance of the bonds and conduct of the election that the county would be the sole participant. In re Validation of Six Hundred & Fifty Thousand Dollars ($650,000) Nursing Home Bonds, 331 So. 2d 907, 1976 Miss. LEXIS 1885 (Miss. 1976).

The requirement of this section [Code 1942, § 7129-51] that the notice of intention to issue bonds contain the full text of the resolution is not implicitly abrogated in the case of bonds issued under other statutes; and failure to comply therewith renders the proceedings invalid. In re Validation of $500,000 Public Improv.General Obligation Bonds, 247 Miss. 448, 152 So. 2d 698, 1963 Miss. LEXIS 315 (Miss. 1963).

Use of statutory phrase, "related facilities" in resolution of board of supervisors declaring its intention to issue bonds under this section [Code 1942, § 7129-51] to obtain hospital and related facilities and use of same phrase in notice of special election did not render bond issue void, because it failed sufficiently to inform electors of purpose for which it was to be made. Board of Sup'rs v. Dawson, 208 Miss. 666, 45 So. 2d 253, 1950 Miss. LEXIS 283 (Miss. 1950).

3. Effect of election.

The result of an election under this section [Code 1942, § 7129-51] is not a mere plebiscite to test public sentiment, but the wishes of the electorate, invited by the board, and formally and fully expressed, constitute a mandate to the board to issue the bonds. Board of Sup'rs v. State, 206 Miss. 443, 40 So. 2d 273, 1949 Miss. LEXIS 272 (Miss. 1949).

Mandamus will lie to compel board of supervisors to issue bonds for purpose of acquiring land for constructing and operating a community hospital after election in favor thereof was had pursuant to the provisions of Laws 1944, ch 277, as amended by Laws 1946, ch 412 (Code 1942, §§ 7129-50 et seq.), notwithstanding subsequent order of board rescinding its action, since a validating act eliminated any irregularity in the proceeding with respect to the election. Board of Sup'rs v. State, 206 Miss. 443, 40 So. 2d 273, 1949 Miss. LEXIS 272 (Miss. 1949).

OPINIONS OF THE ATTORNEY GENERAL

If county wants to guarantee payment on loans from banks to community hospital, board of supervisors must comply with procedures outlined in Sections 41-13-19 through 41-13-23 of Mississippi Code for issuance of bonds, notes and other evidence of indebtedness. 1994 Miss. Op. Att'y Gen. 990.

§ 41-13-21. Details of bonds; interest; sale.

Such bonds, notes or other evidences of indebtedness as are issued pursuant to Section 41-13-19 shall bear such date or dates, shall be of such denomination or denominations, shall be payable at such place or places, shall bear such rate or rates of interest, and shall mature in such amounts and at such times, not to exceed twenty (20) years for general obligation bonds and not to exceed thirty (30) years for revenue bonds, as may be provided and directed by the board of supervisors, board of aldermen, city council, or other like governing body, as the case may be, consistent with the provisions of Sections 41-13-19 through 41-13-23.

Any provisions of the general laws to the contrary notwithstanding, any bonds and interest coupons issued pursuant to the authority of Section 43-13-19 shall possess all the qualities of negotiable instruments. The bonds and the interest coupons shall be executed in such manner and shall be substantially in the form prescribed in the authorizing ordinance. In case any of the officers whose signatures or countersignatures appear on the bonds or interest coupons shall cease to be such officers before delivery of such bonds, such signatures or countersignatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery. No bond shall bear more than one (1) rate of interest. Each bond shall bear interest from its date to its stated maturity date at the interest rate specified in the bid. All bonds of the same maturity shall bear the same rate of interest from date to maturity. All interest accruing on such bonds so issued shall be payable semiannually or annually, except that the first interest coupon attached to any such bond may be for any period not exceeding one (1) year.

No interest payment shall be evidenced by more than one (1) coupon and neither cancelled nor supplemental coupons shall be permitted. The lowest interest rate specified for any bonds issued shall not be less than seventy percent (70%) of the highest interest rate specified for the same bond issue. Each interest rate specified in any bid must be in multiples of one-eighth of one percent (⅛ of 1%) or one-tenth of one percent ($1/1_0$ of 1%). If serial bonds, such bonds shall mature annually, and the first maturity date thereof shall not be more than five (5) years from the date of such bonds. Such bonds shall be legal investments for trustees and other fiduciaries, and for savings banks, trust companies and insurance companies organized under the laws of the State of Mississippi. The bonds and interest coupons shall be exempt from all state, county, municipal and other taxation under the laws of the State of Mississippi.

All bonds, notes or other evidences of indebtedness secured by a pledge of the full faith, credit and resources of the issuing entity shall not bear a rate of interest in excess of that allowed in Section 75-17-101, Mississippi Code of 1972, and shall be sold for not less than par plus accrued interest at public sale in the manner provided by Section 31-19-25.

All bonds, notes or other evidences of indebtedness not secured by a pledge of the full faith, credit and resources of the issuing entity shall not bear a rate of interest in excess of that allowed in Section 75-17-103, Mississippi Code of 1972, and shall be sold for not less than par plus accrued interest at public sale in the manner provided by Section 31-19-25.

Bonds, notes or other evidences of indebtedness may be sold to the United States of America or an agency or agencies thereof at private sale upon such terms and conditions as the governing authorities of the issuing entity may determine, consistent with the provisions of Sections 41-13-19 through 41-13-23.

HISTORY:

Codes, 1942, § 7129-51; Laws, 1944, ch. 277, § 2; Laws, 1946, ch. 412, § 2; Laws, 1948, ch. 435, § 2; Laws, 1954, ch. 294, § 2; Laws, 1966, ch. 459, § 1; Laws, 1968, ch. 442, § 2; Laws, 1970, ch. 321, § 1; Laws, 1972, ch. 447, § 1; Laws, 1975, ch. 452; Laws, 1976, ch. 410; Laws, 1977, ch. 480; Laws, 1980, ch. 490, § 3; Laws, 1981, ch. 455, § 3; Laws, 1982, ch. 434, § 21; Laws, 1983, ch. 541, § 26, eff from and after passage (approved April 25, 1983).

Cross References —

Provision that leased facility shall not be deemed a community hospital except for purposes of Sections 41-13-19 through 41-13-25, see § 41-13-10.

Limitation on the maximum interest rate to maturity on obligations issued under the provisions of this section, see § 75-17-101.

JUDICIAL DECISIONS

1. In general.

Even if coupons on bonds issued under this section [Code 1942, § 7129-51] exceed the bids, this is not sufficient to avoid bond issue. Board of Sup'rs v. Dawson, 208 Miss. 666, 45 So. 2d 253, 1950 Miss. LEXIS 283 (Miss. 1950).

Where resolution of board of supervisors authorizing bond issue for hospital provided a rate of interest amounting to 2.897938%, when premium of $11.00 was included, or 2.899031%, when premium was not included, resolution did not provide greater rate of interest than that stipulated in buyers' bid, that is, an average interest cost of 2.90% and bonds were not void on that ground. Board of Sup'rs v. Dawson, 208 Miss. 666, 45 So. 2d 253, 1950 Miss. LEXIS 283 (Miss. 1950).

§ 41-13-23. Levy of ad valorem tax or pledge of revenues to pay bonds.

(1) All bonds, notes or other evidences of indebtedness issued under Section 41-13-19 may be secured by a pledge of the full faith, credit, and resources of the county, city, town, supervisors district, judicial district or election district issuing the same. There shall annually be levied upon all taxable property within such county, city, town, supervisors district, judicial district or election district, as the case may be, an ad valorem tax, in addition to all other taxes, sufficient to provide for the payment of the principal of and the interest on said bonds, notes or other evidences of indebtedness secured by a pledge of the full faith, credit, and resources of the issuing entity as the same respectively matures and accrues.

(2) All bonds, notes or other evidences of indebtedness issued under Section 41-13-19 may be secured by a pledge of all or a specified portion of the annual general or special revenues of the facility for which the same were issued to acquire, construct, expand, equip or furnish, or by a pledge of any unrestricted unencumbered income from an endowment or other trust funds available to the board of trustees of the facility for which the same were issued to acquire, construct, expand, equip or furnish. The security for such bonds, notes or other evidences of indebtedness authorized and provided for by this subsection may be in addition to or in lieu of the pledge of the full faith, credit, and resources of the issuing entity as provided in subsection (1) hereof.

HISTORY:

Codes, 1942, § 7129-51; Laws, 1944, ch. 277, § 2; Laws, 1946, ch. 412, § 2; Laws, 1948, ch. 435, § 2; Laws, 1954, ch. 294, § 2; Laws, 1966, ch. 459, § 1; Laws, 1968, ch. 442, § 2; Laws, 1970, ch. 321, § 1; Laws, 1972, ch. 447, § 1, eff from and after passage (approved May 5, 1972).

Cross References —

Local ad valorem tax levies, generally, see §§ 27-39-301 et seq.

Provision that leased facility shall not be deemed a community hospital except for purposes of Sections 41-13-19 through 41-13-25, see § 41-13-10.

JUDICIAL DECISIONS

1. In general.

A local law authorizing a city to issue bonds for the purpose of acquiring hospital facilities to be leased to a non-profit corporation provided an alternative to the method of acquiring hospitals provided by general law and did not suspend the general law, as prohibited by Mississippi Constitution, Article 4, § 87; thus, Mississippi Constitution, Article 4, § 89 was applicable. In re Validation of $15,000,000 Hospital Revenue Bonds etc., 361 So. 2d 44, 1978 Miss. LEXIS 2343 (Miss. 1978).

OPINIONS OF THE ATTORNEY GENERAL

A county board of supervisors that has issued bonds pursuant to Miss. Code Section 41-13-19 for the construction of a hospital may use revenues from the operation of the hospital to pay off such bonds. 1997 Miss. Op. Att'y Gen. 530.

§ 41-13-24. Obtaining federal assistance.

Such counties, cities and towns, supervisors districts, judicial districts and election districts of a county are authorized and empowered to apply for, contract for, accept and receive grants and loans and loan guarantee agreements relating to assistance for the construction of hospital and medical facilities and to that end the governing bodies of such counties, cities and towns, supervisors districts, judicial districts and election districts of a county are authorized and empowered to enter into such contracts with the United States of America or the agencies or departments thereof as may be necessary to effectuate the purpose of Sections 41-13-15 through 41-13-51.

Any such county, city and town, supervisors district, judicial district or election district, which shall have entered into a binding contract with the United States of America or any agency or department thereof as aforesaid for any such grant, loan or loan guarantee agreement, may borrow money from any private lender for the purpose of providing interim financing for the acquiring, constructing, expanding, equipping and furnishing of the facilities provided for in such contract with the United States of America or agency or department thereof and assign as security for such interim financing the proceeds of any such grant, loan or loan guarantee agreement. Such interim financing shall be upon such terms and conditions as may be determined by the issuing entity but shall not require payment of interest on the sums actually advanced and received at a rate of interest greater than that rate of interest authorized for interim financing by the state, counties, municipalities or political subdivisions thereof in Section 75-17-107, Mississippi Code of 1972.

HISTORY:

Codes, 1942, § 7129-51(e); Laws, 1972, ch. 447, § 1; Laws, 1975, ch. 410; Laws, 1987, ch. 396, eff from and after passage (approved March 20, 1987).

Editor's Notes —

Section 41-13-51 referred to in this section was repealed by Laws of 1982, ch. 395, § 6, eff from and after July 1, 1982.

§ 41-13-25. Imposition of ad valorem tax; retirement of debt.

The board of supervisors acting for a county, supervisors district or districts or an election district of such county, and the board of aldermen, city council or other like governing body acting for a city or town, are hereby authorized and empowered to levy ad valorem taxes on all the taxable property of such counties, cities, towns, supervisors district or election district for the purposes of raising funds for the maintenance and operation of hospitals, nurses' homes, health centers, health departments, diagnostic or treatment centers, rehabilitation facilities, nursing homes and related facilities established under the provisions of Sections 41-13-15 through 41-13-51, and for making additions and improvements thereto and to pledge such ad valorem taxes, whether or not actually levied, for the retirement of debt incurred either by or on behalf of such facilities and/or pursuant to agreements executed under the authority of the Mississippi Hospital Equipment and Facilities Authority Act; however, any debt incurred by the pledge of taxes to retire debt incurred either by or on behalf of such facilities and/or pursuant to such agreements shall not be included in debt limits prescribed by Section 19-9-5 or Section 21-33-303, as the case may be unless and until such pledged taxes are actually levied. The amount levied for such purpose shall not exceed five (5) mills on the dollar in any one (1) year. Expenditures of said taxes for such additions and improvements shall not exceed in any fiscal year the total amount budgeted therefor by the board of trustees for the respective institutions affected. The tax levy authorized in this section shall be in addition to all other taxes now or hereafter authorized to be levied by such counties, cities, towns, supervisors districts or election district.

It is further provided that any such supervisors district in a county with a land area of five hundred ninety-two (592) square miles, wherein Mississippi Highways 8 and 9 intersect, participating with a municipality under provisions of law by contracting to assist the cost of operation and maintenance of an erected hospital, may levy such ad valorem tax as is needed to operate and maintain such hospital as is provided herein.

HISTORY:

Codes, 1942, § 7129-52; Laws, 1944, ch. 277, § 3; Laws, 1946, ch. 412, § 3; Laws, 1948, ch. 435, § 3; Laws, 1954, ch. 294, § 3; Laws, 1958, ch. 550; Laws, 1968, ch. 442, § 3; Laws, 1987, ch. 526; Laws, 1991, ch. 389 § 1, eff from and after passage (approved March 15, 1991).

Editor's Notes —

Section 41-13-51 referred to in this section was repealed by Laws of 1982, ch. 395, § 6 eff from and after July 1, 1982.

The Mississippi Hospital Equipment and Facilities Authority Act is codified at §§ 41-73-1 et seq.

Cross References —

Local ad valorem tax levies, generally, see §§ 27-39-301 et seq.

Provision that leased facility shall not be deemed a community hospital except for purposes of Sections 41-13-19 through 41-13-25, see § 41-13-10.

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 41-13-25 specifically authorizes board of supervisors of county and governing body of city to levy taxes for maintenance and operation of hospital created under Miss. Code Sections 41-13-15 through 41-13-51; according to Miss. Code Section 41-13-25, such levy may not exceed five million dollars; further, Miss. Code Section 41-13-25 authorizes governing bodies to pledge these taxes to retirement of debt incurred on behalf of facility, regardless of whether tax has actually been levied. 1993 Miss. Op. Att'y Gen. 50.

County is limited to expending maximum of five mills for maintenance and operation of county hospital in any one year. 1994 Miss. Op. Att'y Gen. 990.

Should the Board of Supervisors choose to pledge ad valorem taxes to retire a note incurred for the purpose of meeting the current unpaid expenses, they are permitted to do so by the language of Section 41-13-25 if the Board makes a specific factual finding that it is necessary for the retirement of debt of the hospital. 1995 Miss. Op. Att'y Gen. 681.

There is no authority for the board of trustees of a community hospital to acquire and use small purchase procurement cards, i.e., credit cards, issued in the name of the hospital to be used by employees in making small purchases for the hospital. 2001 Miss. Op. Att'y Gen. 770.

§ 41-13-27. Repealed.

Repealed by Laws, 1982, ch. 395, § 6, eff from and after July 1, 1982.

[Codes, 1942, § 7129-54; Laws, 1944, ch. 277, § 4; Laws, 1948, ch. 413, § 1; Laws, 1950, ch. 504, § 1; Laws, 1954, ch. 289, § 1; Laws, 1956, ch. 297, § 1; Laws, 1958, ch. 363, § 1]

Editor's Notes —

Former § 41-13-27 created boards of trustees for municipal hospitals to operate such hospitals.

§ 41-13-29. Board of trustees for county hospitals or other health facilities.

(1)(a) The owners are authorized to appoint trustees for the purpose of operating and governing community hospitals. The owner of a community hospital may remove a trustee after appointment for good cause shown, upon a unanimous vote of all members of the governing board of the owner that appointed the trustee, or upon a majority vote of the governing board of the owner that appointed the trustee after a recommendation from the board of trustees of the hospital that the trustee be removed. To be eligible for appointment, an appointee must be an adult legal resident of the county which has an ownership interest in the community hospital or the county in which the municipality or other political subdivision holding the ownership interest in the community hospital is located. The authority to appoint trustees shall not apply to leased facilities, unless specifically reserved by the owner in the applicable lease agreement.

(b) The board of trustees shall consist of not more than seven (7) members nor less than five (5) members, except where specifically authorized by statute, and shall be appointed by the respective owners on a pro rata basis comparable to the ownership interests in the community hospital. Where the community hospital is owned solely by a county, or any supervisors districts, judicial districts or election district of a county, or by a municipality, the trustees shall be residents of the owning entity.

(c) Trustees for municipally owned community hospitals shall be appointed by the governing authority of the municipality. Trustees for a community hospital owned by a county shall be appointed by the board of supervisors with each supervisor having the right to nominate one (1) trustee from his district or from the county at large. Appointments exceeding five (5) in number shall be from the county at large. Trustees for a community hospital owned solely by supervisors districts, judicial districts or election district of a county, shall be appointed by the board of supervisors of the county from nominees submitted by the supervisor or supervisors representing the owner district or districts.

(2)(a) Initially the board of trustees shall be appointed as follows: one (1) for a term of one (1) year, one (1) for a term of two (2) years, one (1) for a term of three (3) years, one (1) for a term of four (4) years, and one (1) for a term of five (5) years. Appointments exceeding five (5) in number shall be for terms of four (4) and five (5) years, respectively. Thereafter, all terms shall be for five (5) years. No community hospital trustee holding office on July 1, 1982, shall be affected by this provision, but the terms shall be filled at the expiration thereof according to the provisions of this section; provided, however, that any other specific appointment procedures presently authorized shall likewise not be affected by the terms hereof. Any vacancy on the board of trustees shall be filled within ninety (90) days by appointment by the applicable owner for the remainder of the unexpired term.

(b) From and after January 1, 2016, to be eligible for appointment, an appointee must have no felony convictions, possess at least a high school diploma or the equivalent, owe no outstanding debt to the community hospital, and not be a plaintiff in any pending lawsuit against the community hospital. The appointee may not own an interest in, or be an officer or employee of, a company or business that provides goods or services in direct competition with the community hospital, nor may the appointee's spouse own an interest in, or be an officer of, such company or business.

(3)(a) Any community hospital erected, owned, maintained and operated by any county located in the geographical center of the State of Mississippi and in which State Highways No. 12 and No. 35 intersect, shall be operated by a board of trustees of five (5) members who have the qualifications set forth in this section to be appointed by the board of supervisors from the county at large, one (1) for a term of one (1) year, one (1) for a term of two (2) years, one (1) for a term of three (3) years, one (1) for a term of four (4) years, and one (1) for a term of five (5) years. Thereafter all trustees shall be appointed from the county at large for a period of five (5) years.

(b) Any community hospital erected, owned, maintained and operated by any county situated in the Yazoo-Mississippi Delta Levee District and bordering on the Mississippi River and having a population of not less than forty-five thousand (45,000) and having an assessed valuation of not less than Thirty Million Dollars ($30,000,000.00) for the year 1954, shall be operated by a board of trustees which may consist of not more than eleven (11) members who have the qualifications set forth in this section.

(c) Any hospital erected, owned, maintained and operated by any county having two (2) judicial districts, which is traversed by U.S. Interstate Highway 59, which intersects Highway 84 therein, shall be operated by a board of trustees which shall consist of seven (7) members who have the qualifications set forth in this section. The first seven (7) members appointed under authority of this paragraph shall be appointed by the board of supervisors for terms as follows:

Each supervisor of Supervisors Districts One and Two shall nominate and the board of supervisors shall appoint one (1) person from each said beat for a one-year term. Each supervisor of Supervisors Districts Three and Four shall nominate and the board of supervisors shall appoint one (1) person from each beat for a two-year term. The supervisor of Supervisors District

Five shall nominate and the board of supervisors shall appoint one (1) person from the beat for a three-year term. The medical staff at the hospital shall submit a list of four (4) nominees and the supervisors shall appoint two (2) trustees from the list of nominees, one (1) for a three-year term and one (1) for a one-year term. Thereafter, as the terms of the board of trustee members authorized by this paragraph expire, all but the trustee originally appointed from the medical staff nominees for a one-year term shall be appointed by the board of supervisors for terms of three (3) years. The term of the trustee originally appointed from the medical staff nominees by the board of supervisors for a term of one (1) year shall remain a term of one (1) year and shall thereafter be appointed for a term of one (1) year. The two (2) members appointed from medical staff nominees shall be appointed from a list of two (2) nominees for each position to be submitted by the medical staff of the hospital for each vacancy to be filled. It is the intent of the Legislature that the board of trustees which existed prior to July 1, 1985, was abolished by amendment to this section under Section 5, Chapter 511, Laws of 1985, and the amendment authorized the appointment of a new board of trustees on or after July 1, 1985, in the manner provided in this paragraph. Any member of the board of trustees which existed before July 1, 1985, who has the qualifications set forth in this section shall be eligible for reappointment subject to the provisions of this paragraph.

(d) Any community hospital erected, owned, maintained and operated by any county bordering on the Mississippi River having two (2) judicial districts, wherein U.S. Highway 61 and Mississippi Highway 8 intersect, lying wholly within a levee district, shall be operated by a board of trustees which may consist of not more than nine (9) members who have the qualifications set forth in this section.

(e) Any community hospital system owned, maintained and operated by any county bordering on the Gulf of Mexico and the State of Alabama shall be operated by a board of trustees constituted as follows: seven (7) members shall be selected as provided in subsection (1) of this section and two (2) advisors who shall be the chiefs of staff at those hospitals which are a part of the hospital system; the members must have the qualifications set forth in this section. The term of the chiefs of staff on the board of trustees shall coincide with their service as chiefs of staff at their respective hospitals.

(4) Any community hospital owned, maintained and operated by any county wherein Mississippi Highways 16 and 19 intersect, having a land area of five hundred sixty-eight (568) square miles, and having a population in excess of twenty-three thousand seven hundred (23,700) according to the 1980 federal decennial census, shall be operated by a board of trustees of five (5) members who have the qualifications set forth in this section, one (1) of whom shall be elected by the qualified electors of each supervisors district of the county in the manner provided herein. Each member so elected shall be a resident and qualified elector of the district from which he is elected. The first elected members of the board of trustees shall be elected at the regular general election held on November 4, 1986. At the election, the members of the board

from Supervisors Districts One and Two shall be elected for a term of six (6) years; members of the board from Supervisors Districts Three and Four shall be elected for a term of two (2) years; and the member of the board from Supervisors District Five shall be elected for a term of four (4) years. Each subsequent member of the board shall be elected for a term of six (6) years at the same time as the general election in which the member of the county board of education representing the same supervisors district is elected. All members of the board shall take office on the first Monday of January following the date of their election. The terms of all seven (7) appointed members of the board of trustees holding office on the effective date of this act (Laws 1986, Chapter 462) shall expire on the date that the first elected members of the board take office. The board of trustees provided for herein shall not lease or sell the community hospital property under its jurisdiction unless the board of supervisors of the county calls for an election on the proposition and a majority voting in the election shall approve the lease or sale.

The members of the board of trustees provided for in this subsection shall be compensated a per diem and reimbursed for their expenses and mileage in the same amount and subject to the same restrictions provided for members of the county board of education in Section 37-5-21 and may, at the discretion of the board, choose to participate in any hospital medical benefit plan which may be in effect for hospital employees. Any member of the board of trustees choosing to participate in the plan shall pay the full cost of his participation in the plan so that no expenditure of hospital funds is required.

The name of any qualified elector who is a candidate for the community hospital board of trustees shall be placed on the ballot used in the general elections by the county election commissioners, if the candidate files with the county election commissioners, not more than ninety (90) days and not less than thirty (30) days before the date of the general election, a petition of nomination signed by not less than fifty (50) qualified electors of the county residing within each supervisors district. The candidate in each supervisors district who receives the highest number of votes cast in the district shall be declared elected.

(5) A board of trustees provided for herein may, in its discretion, where funds are available, compensate each trustee per diem in the amount of at least the amount established by Section 25-3-69 up to the maximum amount of not more than One Hundred Fifty Dollars ($150.00) for each meeting of the board of trustees or meeting of a committee established by the board of trustees where the trustee was in attendance, and in addition thereto provide meals at the meetings and compensate each member attending travel expenses at the rate authorized by Section 25-3-41 for actual mileage traveled to and from the place of meeting.

(6) The owner which appointed a trustee may likewise remove him from office by majority vote for failure to attend at least fifty percent (50%) of the regularly scheduled meetings of the board during the twelve-month period preceding the vote, or for violation of any statute relating to the responsibilities of his office, based upon the recommendation of a majority of the remaining trustees.

(7) For community hospitals located in a county having a population of less than one hundred thousand (100,000) according to the most recent federal decennial census, the members of the board of trustees, administrator and any other officials of the community hospital as may be deemed necessary or proper by the board of trustees shall be under bond in an amount not less than Ten Thousand Dollars ($10,000.00) nor more than One Hundred Thousand Dollars ($100,000.00) with some surety company authorized to do business in the State of Mississippi to faithfully perform the duties of his office. For community hospitals located in a county having a population of one hundred thousand (100,000) or more according to the most recent federal decennial census, the bond shall be in an amount not less than Fifty Thousand Dollars ($50,000.00) nor more than Five Hundred Thousand Dollars ($500,000.00). Premiums for the bonds shall be paid from funds of the community hospital.

HISTORY:

Codes, 1942, § 7129-55; Laws, 1944, ch. 277, § 5; Laws, 1948, ch. 413, § 2; Laws, 1954, ch. 287; Laws, 1955, Ex. Sess. ch. 32, § 1; Laws, 1956, ch. 297, § 2; Laws, 1958, ch. 363, § 2; Laws, 1962, ch. 402; Laws, 1976, ch. 321; Laws, 1977, ch. 477; Laws, 1979, ch. 327; Laws, 1982, ch. 395, § 2; Laws, 1985, ch. 511, § 5; Laws, 1986, ch. 458, § 37; Laws, 1986, ch. 462, § 1; Laws, 1995, ch. 378, § 1; Laws, 2009, ch. 452, § 1; Laws, 2015, ch. 484, § 6, eff from and after Jan. 1, 2016; Laws, 2018, ch. 430, § 1, eff from and after July 1, 2018.

Editor's Notes —

Section 37-5-21 referred to in (4) was repealed by Laws of 1986, ch. 492, § 44, eff from and after July 1, 1987.

Laws of 1985, ch. 511, §§ 1, 10, eff from and after July 1, 1985, provide as follows:

"SECTION 1. It is the intent and purpose of this act to clarify and expand the power of boards of trustees of community hospitals so as to allow such community hospitals to operate efficiently, to offer competitive health care services, to respond more effectively to new developments and regulatory changes in the health care area and to continue to serve and promote the health and welfare of the citizens of the State of Mississippi. This act shall be liberally construed so as to give effect to such intent and purpose.

"SECTION 10. This act shall not affect any rights, duties or obligations heretofore granted or imposed by local and private legislation heretofore enacted for the benefit of any owner or community hospital, and the provisions of this act shall be supplemental to and shall not restrict or repeal any general or special authority, powers, rights or privileges with respect to community hospitals heretofore conferred on board of trustees."

Laws of 1986, ch. 458, § 48, provided that § 41-13-29 would stand repealed from and after October 1, 1989. Subsequently, three 1989 chapters (341, 342, and 343) amended Section 48, Chapter 458, Laws of 1986, by deleting the date for repeal.

Laws of 1986, ch. 462, § 1, proposed to amend this section, subject to approval under § 5 of the Voting Rights Act of 1965, as amended and extended. This proposed amendment was found unconstitutional in Slater v. Neshoba County Board of Elections Commission, Cause No. 14034 (Neshoba County Ch. Ct., Oct. 8, 1986). Thereafter, the United States Attorney General issued no determination of pre-clearance of the amendment proposed by Section 1, Chapter 462, Laws, 1986, pursuant to the Voting Rights Act of 1965, as amended and extended.

Amendment Notes —

The 2018 amendment, effective July 1, 2018, added the second sentence in (2)(b); substituted "and two (2) advisors who shall be" for "and the remaining members shall be" in (3)(e).

Cross References —

Definition of "board of trustees" for purposes of this chapter, see § 41-13-10.

General powers and duties of the board of trustees for county hospitals, see § 41-13-35.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Liability of board of trustees.
3. Actions.

1. In general.

Since the office of community hospital trustee is a public office, Mississippi Constitution § 90(o) is applicable to Mississippi Code § 41-13-29(3)(c). State ex rel. Pair v. Burroughs, 487 So. 2d 220, 1986 Miss. LEXIS 2437 (Miss. 1986).

Since Mississippi Code § 41-13-29(3)(c) contravenes Mississippi Constitution § 90, § 89 of the Constitution is inapplicable. State ex rel. Pair v. Burroughs, 487 So. 2d 220, 1986 Miss. LEXIS 2437 (Miss. 1986).

Subsection (3)(c) of Mississippi Code § 41-13-29 is void in its entirety as in violation of the Mississippi Constitution. State ex rel. Pair v. Burroughs, 487 So. 2d 220, 1986 Miss. LEXIS 2437 (Miss. 1986).

The appointment of claimant to office of Jones County Community Hospital trustee which was made pursuant to Mississippi Code § 41-13-29(3)(c), containing prohibited "highway" language, was invalid, and his claim for having been appointed to an at-large position under subsection (2) of the statute was without merit. State ex rel. Pair v. Burroughs, 487 So. 2d 220, 1986 Miss. LEXIS 2437 (Miss. 1986).

That part of subsection (3)(c) referring to highways 59 and 84 bears no rational relationship to the means of appointing trustees. State ex rel. Pair v. Burroughs, 487 So. 2d 220, 1986 Miss. LEXIS 2437 (Miss. 1986).

County hospital trustees may not make themselves an allowance for services, where the law makes no provision therefor, although they act in good faith and from honest motives. Golding v. Salter, 234 Miss. 567, 107 So. 2d 348, 1958 Miss. LEXIS 530 (Miss. 1958).

Christmas bonuses to county hospital employees as a reward for faithful service, is not within powers of its trustees. Golding v. Salter, 234 Miss. 567, 107 So. 2d 348, 1958 Miss. LEXIS 530 (Miss. 1958).

2. Liability of board of trustees.

In a case in which a behavioral health limited liability company (LLC) contracted with a community hospital to operate and manage a behavioral unit, and the LLC had not requested a guarantee from the hospital board of trustees (trustees) or the county board of supervisors (supervisors), the simple fact that the hospital was under the direction and control of the trustees and the supervisors did not equate to a responsibility on their part to assume the contractual obligations of the hospital. Sunstone Behavioral Health, LLC v. Covington County Hosp., 2008 U.S. Dist. LEXIS 77381 (S.D. Miss. Aug. 19, 2008).

Members of a county hospital board are not personally liable for amounts paid in good faith to the administrator for traveling expenses in performance of his duties, to any employee for special service rendered while not on salary, for purchases of supplies without competitive bids, and for flowers purchased, as an expression of sympathy, for funerals of members of families of hospital employees. Golding v. Salter, 234 Miss. 567, 107 So. 2d 348, 1958 Miss. LEXIS 530 (Miss. 1958).

No provision is made as to liability of hospital board members for unauthorized or wrongful appropriation of hospital funds; hence such liability is governed by the common law rule that a public officer acting judicially or quasi-judicially is not liable if he acted in good faith within the scope of the subject matter over which he is given jurisdiction. Golding v. Salter, 234 Miss. 567, 107 So. 2d 348, 1958 Miss. LEXIS 530 (Miss. 1958).

3. Actions.

Since an action by a medical insurer for alleged overcharges by a hospital was not one in tort, but for money had and received, the county, the hospital and the hospital trustees were not entitled to have the action dismissed on the ground that it was an action in tort, and that they, as agents or subdivisions of the state, were immune to the suit. Reserve Life Ins. Co. v. Salter, 152 F. Supp. 868, 1957 U.S. Dist. LEXIS 3486 (D. Miss. 1957).

Evidence of overcharges by a hospital, which was not rebutted, entitled medical insurer to judgment for money had and received against the county, county hospital and the hospital administrator. Reserve Life Ins. Co. v. Salter, 152 F. Supp. 868, 1957 U.S. Dist. LEXIS 3486 (D. Miss. 1957).

OPINIONS OF THE ATTORNEY GENERAL

Trustees for a community hospital owned by a county are to be appointed by the board of supervisors, with each board member having an exclusive right to nominate one member from their district or the community at large. 1986 Miss. Op. Att'y Gen. 1.

In the event of a vacancy on the board of trustees for a community hospital owned by a county, each supervisor may select a nominee from his or her own district or the county at large, the board may vote to approve or reject that nominee, and if rejected, that supervisor may name a different nominee. 1997 Miss. Op. Att'y Gen. 372.

If a member of the board of commissioners of a county hospital moves to an adjacent county, he is required to vacate his position, even if he has a business in the city which he continues to maintain. 1999 Miss. Op. Att'y Gen. 140.

Each supervisor can nominate one trustee from his district or from the county at large, but they should make appointments exceeding five from the county at large. 2001 Miss. Op. Att'y Gen. 653.

The failure of one district to have a trustee appointed by that district supervisor does not invalidate the appointment of the other trustees or the acts of the board. 2001 Miss. Op. Att'y Gen. 653.

If the vacancy on the board of trustees for a county hospital is an at-large appointment, the appointment shall be made within 90 days by the board of supervisors as a whole. However, if the vacancy is not an at-large appointment, the appropriate supervisor shall submit a nomination and the appointment shall be made within 90 days by the board of supervisors. 2004 Miss. Op. Att'y Gen. 10.

Members of boards of trustees of community hospitals may not participate in hospitals' life and health insurance programs after they leave their positions as trustees. 2005 Miss. Op. Att'y Gen. 580.

Trustees of a community hospital are entitled to be reimbursed at the rate of 20 cents per mile for travel expenses incurred while performing official duties; however, governing authorities of the county may authorize an increase in the mileage reimbursement in an amount not to exceed the rate authorized for state officers and employees in Section 25-3-41 (1). 2005 Miss. Op. Att'y Gen. 353.

Members of boards of trustees of community hospitals may not participate in hospitals' life and health insurance programs after they leave their positions as trustees. 2005 Miss. Op. Att'y Gen. 580.

§§ 41-13-31 and 41-13-33. Repealed.

Repealed by Laws, 1982, ch. 395, § 6, eff from and after July 1, 1982.

§ 41-13-31. [Codes, 1942, § 7129-56; Laws, 1944, ch. 277; Laws, 1946, ch. 412, § 4; Laws, 1948, ch. 435, § 4; Laws, 1956, ch. 297, § 3; Laws, 1958, ch. 368, § 3; Laws, 1968, ch. 442, § 4; Laws, 1978, ch. 321, § 1]

§ 41-13-33. [Codes, 1942, § 7129-56.5; Laws, 1958, ch. 363, § 4; Laws, 1966, chs. 460, 482; Laws, 1968, ch. 443, § 1; Laws, 1972, ch. 510, § 1; Laws, 1981, ch. 436, § 2]

Editor's Notes —

Former § 41-13-31 established boards of trustees for hospitals other than municipal or county hospitals.

Former § 41-13-33 authorized the payment of compensation to board members.

§ 41-13-35. General powers and duties of trustees; bonds; prohibited acts or behavior of trustees, individual trustee, or agent or servant of trustee.

(1) The board of trustees of any community hospital shall have full authority to appoint an administrator, who shall not be a member of the board of trustees, and to delegate reasonable authority to such administrator for the operation and maintenance of such hospital and all property and facilities otherwise appertaining thereto.

(2) The board of trustees shall have full authority to select from its members, officers and committees and, by resolution or through the board bylaws, to delegate to such officers and committees reasonable authority to carry out and enforce the powers and duties of the board of trustees during the

interim periods between regular meetings of the board of trustees; provided, however, that any such action taken by an officer or committee shall be subject to review by the board, and actions may be withdrawn or nullified at the next subsequent meeting of the board of trustees if the action is in excess of delegated authority.

(3) The board of trustees shall be responsible for governing the community hospital under its control and shall make and enforce staff and hospital bylaws and/or rules and regulations necessary for the administration, government, maintenance and/or expansion of such hospitals. The board of trustees shall keep minutes of its official business and shall comply with Section 41-9-68.

(4) The decisions of said board of trustees of the community hospital shall be valid and binding unless expressly prohibited by applicable statutory or constitutional provisions.

(5) The power of the board of trustees shall specifically include, but not be limited to, the following authority:

(a) To deposit and invest funds of the community hospital in accordance with Section 27-105-365;

(b) To establish such equitable wage and salary programs and other employment benefits as may be deemed expedient or proper, and in so doing, to expend reasonable funds for such employee salary and benefits. Allowable employee programs shall specifically include but not be limited to, medical benefit, life, accidental death and dismemberment, disability, retirement and other employee coverage plans. The hospital may offer and fund such programs directly or by contract with any third party and shall be authorized to take all actions necessary to implement, administer and operate such plans, including payroll deductions for such plans;

(c) To authorize employees to attend and to pay actual expenses incurred by employees while engaged in hospital business or in attending recognized educational or professional meetings;

(d) To enter into loan or scholarship agreements with employees or students to provide educational assistance where such student or employee agrees to work for a stipulated period of time for the hospital;

(e) To devise and implement employee incentive programs;

(f) To recruit and financially assist physicians and other health-care practitioners in establishing, or relocating practices within the service area of the community hospital including, without limitation, direct and indirect financial assistance, loan agreements, agreements guaranteeing minimum incomes for a stipulated period from opening of the practice and providing free office space or reduced rental rates for office space where such recruitment would directly benefit the community hospital and/or the health and welfare of the citizens of the service area;

(g) To contract by way of lease, lease-purchase or otherwise, with any agency, department or other office of government or any individual, partnership, corporation, owner, other board of trustees, or other health-care facility, for the providing of property, equipment or services by or to the community hospital or other entity or regarding any facet of the construction, management, funding or operation of the community hospital or any division or department thereof, or any related activity, including, without limitation, shared management expertise or employee insurance and retirement programs, and to terminate said contracts when deemed in the best interests of the community hospital;

(h) To file suit on behalf of the community hospital to enforce any right or claims accruing to the hospital and to defend and/or settle claims against the community hospital and/or its board of trustees;

(i) To sell or otherwise dispose of any chattel property of the community hospital by any method deemed appropriate by the board where such disposition is consistent with the hospital purposes or where such property is deemed by the board to be surplus or otherwise unneeded;

(j) To let contracts for the construction, remodeling, expansion or acquisition, by lease or purchase, of hospital or health-care facilities, including real property, within the service area for community hospital purposes where such may be done with operational funds without encumbrancing the general funds of the county or municipality, provided that any contract for the purchase of real property must be ratified by the owner;

(k) To borrow money and enter other financing arrangements for community hospital and related purposes and to grant security interests in hospital equipment and other hospital assets and to pledge a percentage of hospital revenues as security for such financings where needed; provided that the owner shall specify by resolution the maximum borrowing authority and maximum percent of revenue which may be pledged by the board of trustees during any given fiscal year;

(*l*) To expend hospital funds for public relations or advertising programs;

(m) To offer the following inpatient and outpatient services, after complying with applicable health planning, licensure statutes and regulations, whether or not heretofore offered by such hospital or other similar hospitals in this state and whether or not heretofore authorized to be offered, long-term care, extended care, home care, after-hours clinic services, ambulatory surgical clinic services, preventative health-care services including wellness services, health education, rehabilitation and diagnostic and treatment services; to promote, develop, operate and maintain a center providing care or residential facilities for the aged, convalescent or handicapped; and to promote, develop and institute any other services having an appropriate place in the operation of a hospital offering complete community health care;

(n) To promote, develop, acquire, operate and maintain on a nonprofit basis, or on a profit basis if the community hospital's share of profits is used solely for community hospital and related purposes in accordance with this chapter, either separately or jointly with one or more other hospitals or health-related organizations, facilities and equipment for providing goods, services and programs for hospitals, other health-care providers, and other persons or entities in need of such goods, services and programs and, in doing so, to provide for contracts of employment or contracts for services and ownership of property on terms that will protect the public interest;

(o) To establish and operate medical offices, child care centers, wellness or fitness centers and other facilities and programs which the board determines are appropriate in the operation of a community hospital for the benefit of its employees, personnel and/or medical staff which shall be operated as an integral part of the hospital and which may, in the direction of the board of trustees, be offered to the general public. If such programs are not established in existing facilities or constructed on real estate previously acquired by the owners, the board of trustees shall also have authority to acquire, by lease or purchase, such facilities and real property within the service area, whether or not adjacent to existing facilities, provided that any contract for the purchase of real property shall be ratified by the owner. The trustees shall lease any such medical offices to members of the medical staff at rates deemed appropriate and may, in its discretion, establish rates to be paid for the use of other facilities or programs by its employees or personnel or members of the public whom the trustees may determine may properly use such other facilities or programs;

(p) Provide, at its discretion, ambulance service and/or to contract with any third party, public or private, for the providing of such service;

(q) Establish a fair and equitable system for the billing of patients for care or users of services received through the community hospital, which in the exercise of the board of trustees' prudent fiscal discretion, may allow for rates to be classified according to the potential usage by an identified group or groups of patients of the community hospital's services and may allow for standard discounts where the discount is designed to reduce the operating costs or increase the revenues of the community hospital. Such billing system may also allow for the payment of charges by means of a credit card or similar device and allow for payment of administrative fees as may be regularly imposed by a banking institution or other credit service organization for the use of such cards;

(r) To establish as an organizational part of the hospital or to aid in establishing as a separate entity from the hospital, hospital auxiliaries designed to aid the hospital, its patients, and/or families and visitors of patients, and when the auxiliary is established as a separate entity from the hospital, the board of trustees may cooperate with the auxiliary in its operations as the board of trustees deems appropriate; and

(s) To make any agreements or contracts with the federal government or any agency thereof, the State of Mississippi or any agency thereof, and any county, city, town, supervisors district or election district within this state, jointly or separately, for the maintenance of charity facilities.

(6) No board of trustees of any community hospital may accept any grant of money or other thing of value from any not-for-profit or for-profit organization established for the purpose of supporting health care in the area served by the facility unless two-thirds (⅔) of the trustees vote to accept the grant.

(7) No board of trustees, individual trustee or any other person who is an agent or servant of the trustees of any community hospital shall have any

personal financial interest in any not-for-profit or for-profit organization which, regardless of its stated purpose of incorporation, provides assistance in the form of grants of money or property to community hospitals or provides services to community hospitals in the form of performance of functions normally associated with the operations of a hospital.

HISTORY:

Codes, 1942, § 7129-56.5; Laws, 1958, ch. 363, § 4; Laws, 1966, chs. 460, 482; Laws, 1968, ch. 443, § 1; Laws, 1982, ch. 395, § 4; Laws, 1985, ch. 511, § 6; Laws, 1993, ch. 535, § 2; Laws, 1994, ch. 407, § 1; Laws, 2004, ch. 414, § 1, eff from and after July 1, 2004.

Editor's Notes —

Laws of 1985, ch. 511, §§ 1, 10, eff from and after July 1, 1985, provide as follows:

"SECTION 1. It is the intent and purpose of this act to clarify and expand the power of boards of trustees of community hospitals so as to allow such community hospitals to operate efficiently, to offer competitive health care services, to respond more effectively to new developments and regulatory changes in the health care area and to continue to serve and promote the health and welfare of the citizens of the State of Mississippi. This act shall be liberally construed so as to give effect to such intent and purpose.

"SECTION 10. This act shall not affect any rights, duties or obligations heretofore granted or imposed by local and private legislation heretofore enacted for the benefit of any owner or community hospital, and the provisions of this act shall be supplemental to and shall not restrict or repeal any general or special authority, powers, rights or privileges with respect to community hospitals heretofore conferred on board of trustees."

On July 15, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1993, ch. 535, § 2.

Cross References —

Exemption of certain hospital records from requirement of public access, see § 41-9-68.

Authority of community hospital administrator to exercise powers which have been delegated to him by board of trustees, see § 41-13-36.

Requisite provisions of loan agreements between community hospital and physician, employee, or student, see § 41-13-38.

Authority of boards of trustees of community hospitals to contract with the Mississippi Hospital Equipment and Facilities Authority for financing or refinancing of hospital equipment or facilities, see § 41-73-47.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Liability.
3. Arbitration.
4. Employment contract.

1. In general.

From a hospital management company's action seeking injunctive relief to prevent the County's termination, through its board of supervisors, of an agreement to allow the company to manage a county hospital, the hospital agreement was not binding upon the supervisors as the hospital trustees did not have authority to enter the agreement under Miss. Code Ann. § 41-3-35 without the approval of the board of supervisors. Greene County v. Corporate Mgmt., 10 So. 3d 424, 2009 Miss. LEXIS 266 (Miss. 2009).

Given the context of the relationship between the manager and the nursing home, there was no genuine issue of material fact regarding whether the manager was an "instrumentality" of the nursing home; as an instrumentality of a community hospital, the manager was entitled to the protections, limitations, and immunities of the Mississippi Tort Claims Act. Estate of Fedrick v. Quorum Health Res., Inc., 2008 Miss. App. LEXIS 672 (Miss. Ct. App. Nov. 4, 2008), rev'd, 45 So. 3d 641, 2010 Miss. LEXIS 363 (Miss. 2010).

Miss. Code Ann. § 41-13-35(5)(n) statutorily empowered community hospital to contract with private physicians in general interest of serving and promoting the health and welfare of the citizens of Mississippi, and a state entity did not lose its status under the Mississippi Tort Claims Act by merely contracting with a private entity; however, the medical center did not meet the statutory definition of a community hospital as it was not governed, operated and maintained by a board of trustees as required by Miss. Code Ann. § 41-13-10(c) for a community hospital. Bolivar Leflore Med. Alliance, LLP v. Williams, 938 So. 2d 1222, 2006 Miss. LEXIS 536 (Miss. 2006).

Medical center was an instrumentality of the community hospital as the hospital had nearly total interest in the income and losses of the medical center and majority control over the center's Executive Committee membership, which clearly qualified the hospital as an intermediary or agent through which certain functions of the hospital were accomplished; therefore, the medical center was an instrumentality of the hospital and as an instrumentality, the center was entitled to the protections, limitations and immunities of the Mississippi Tort Claims Act. Bolivar Leflore Med. Alliance, LLP v. Williams, 938 So. 2d 1222, 2006 Miss. LEXIS 536 (Miss. 2006).

Because Mississippi law permitted hospital to enter into exclusive contract with physician for access to hospital's end stage renal disease (ESRD) units for out-patient kidney dialysis, such contract did not violate Mississippi's antitrust law. Martin v. Memorial Hosp., 130 F.3d 1143, 1997 U.S. App. LEXIS 36424 (5th Cir. Miss. 1997).

Members of hospital board enjoyed qualified immunity with respect to state law tort and antitrust claims asserted by nephrologist, who was denied access to hospital's end stage renal disease (ESRD) units for out-patient kidney dialysis upon severance of his practice from that of physician with whom hospital had exclusive contract for provision of such services; board members did not exceed their authority, as state law permitted them to enter into exclusive contract, and their entry into that contract and subsequent reiteration of it did not amount to intentional tortious interference with contract, as that contract pre-dated nephrologist's association with physician and hospital. Martin v. Memorial Hosp., 130 F.3d 1143, 1997 U.S. App. LEXIS 36424 (5th Cir. Miss. 1997).

Municipal hospital was entitled to state action immunity from federal antitrust claim arising from its exclusive contract with medical supervisor, who performed chronic dialysis in its facility for end stage renal disease, as (1) it was subdivision of municipal corporation under §§ 41-13-10 et seq., it was required to obtain certificate of need under § 41-7-191(1)(a) and (b), and it had right under § 41-13-35(5)(g) to contract with any person to provide services, and (2) purpose of its contract to supervise special unit and perform critical functions was to obtain physician's dedicated services by displacing unfettered professional medical freedom, and allegedly anticompetitive results were thus foreseeable. Martin v. Memorial Hosp., 86 F.3d 1391, 1996 U.S. App. LEXIS 16695 (5th Cir. Miss. 1996).

Section 41-13-35 does not clearly articulate a state policy to displace competition with regulation or monopoly public service, nor is the suppression of competition a foreseeable result of what § 41-13-35 authorizes, and thus a defendant hospital was not entitled to state action immunity in an action in which a physician alleged that the hospital violated state and federal antitrust law by maintaining an exclusive contract with another physician and denying his request to admit a patient. Martin v. Memorial Hosp., 881 F. Supp. 1087, 1995 U.S. Dist. LEXIS 9992 (S.D. Miss. 1995), rev'd, 86 F.3d 1391, 1996 U.S. App. LEXIS 16695 (5th Cir. Miss. 1996).

Even if a hospital had traditionally used funds from its "excess revenues" account to settle claims and pay judgments pursuant to the authority granted by § 41-13-35(5)(h), such expenditures would not constitute a waiver of immunity with regard to future "excess revenues." Womble v. Singing River Hosp., 618 So. 2d 1252, 1993 Miss. LEXIS 125 (Miss. 1993), limited, Sparks v. Kim, 701 So. 2d 1113, 1997 Miss. LEXIS 619 (Miss. 1997), limited, Barnes v. Singing River Hosp. Sys., 733 So. 2d 199, 1999 Miss. LEXIS 31 (Miss. 1999).

Community hospital employees who were terminated prior to effective date of 1988 amendment of Miss. Code Anno. § 41-13-35 acquired no property interest in their continued employment by virtue of enactment of that law. Johnson v. Southwest Mississippi Regional Medical Center, 878 F.2d 856, 1989 U.S. App. LEXIS 11245 (5th Cir. Miss. 1989).

Miss. Code § 41-13-35, together with overall statutory package, was intended to allow community hospitals to offer competitive health care services and does not authorize exclusion of competing provider, and thus does not support hospital's claim of clearly articulated state policy sufficient to provide hospital with immunity from anti-trust liability in action by independent, certified registered nurse anesthetist, who had sued hospital for damages arising from hospital's alleged interference with plaintiff's right to work at hospital. Wicker v. Union County General Hospital, 673 F. Supp. 177, 1987 U.S. Dist. LEXIS 10544 (N.D. Miss. 1987).

2. Liability.

In a case in which a behavioral health limited liability company (LLC) contracted with a community hospital to operate and manage a behavioral unit, and the LLC had not requested a guarantee from the hospital board of trustees (trustees) or the county board of supervisors (supervisors), the simple fact that the hospital was under the direction and control of the trustees and the supervisors did not equate to a responsibility on their part to assume the contractual obligations of the hospital. Sunstone Behavioral Health, LLC v. Covington County Hosp., 2008 U.S. Dist. LEXIS 77381 (S.D. Miss. Aug. 19, 2008).

3. Arbitration.

It was proper to deny a supplier's motion to compel mediation and arbitration because it did not prove the existence of an arbitration agreement; the supplier's failure to fulfill its duty to ensure that sufficient terms of its contract with the community hospital were spread upon the minutes of the hospital's board of trustees did not entitle it to an exception from the enforcement of a well-established policy that allowed the public to consult a board's minutes to see what was done. Wellness, Inc. v. Pearl River Cnty. Hosp., 178 So. 3d 1287, 2015 Miss. LEXIS 568 (Miss. 2015).

Trial court did not err by denying a supplier's motion to compel mediation and arbitration because the supplier did not establish the existence of an arbitration agreement; the minutes from the meetings of the community hospital's board of trustees did not set forth sufficient terms to establish the liabilities and obligations of the parties and thus, the supreme court could not enforce the contract, much less the mediation or arbitration clauses therein. Wellness, Inc. v. Pearl River Cnty. Hosp., 178 So. 3d 1287, 2015 Miss. LEXIS 568 (Miss. 2015).

4. Employment contract.

Employee's constitutional rights were not violated when he was terminated because the minutes did not contain any provision that would limit the ability of the county hospital board of trustees to terminate the emplooyee, and without a valid contract, the employee did not have a constitutionally protected property interest in continued employment. Kennedy v. Claiborne Cnty., 233 So. 3d 825, 2017 Miss. App. LEXIS 82 (Miss. Ct. App.), cert. denied, — So. 3d —, 2017 Miss. LEXIS 516 (Miss. 2017).

Court cannot enforce a contract with a public board that limits the board's ability to terminate an employee and contains certain obligations such as notice of termination and an opportunity to correct the cause, without any reference to those obligations in the minutes. Kennedy v. Claiborne Cnty., 233 So. 3d 825, 2017 Miss. App. LEXIS 82 (Miss. Ct. App.), cert. denied, — So. 3d —, 2017 Miss. LEXIS 516 (Miss. 2017).

Minutes did not sufficiently evidence an employment contract between an employee and the county hospital board of trustees because although the contract was signed by a board member, there were no minutes to show the member was authorized to unilaterally enter into the contract or to bind the board; there were no minutes to indicate the contract was determined or decided upon only in or at a lawfully convened session. Kennedy v. Claiborne Cnty., 233 So. 3d 825, 2017 Miss. App. LEXIS 82 (Miss. Ct. App.), cert. denied, — So. 3d —, 2017 Miss. LEXIS 516 (Miss. 2017).

Circuit court properly entered judgment in favor of a county in an employee's action alleging breach of an employment agreement because the minutes did not sufficiently reflect a contract between the employee and the county hospital board of trustees; the circuit court's finding that a copy of the contract was not attached to the minutes was not manifestly wrong or clearly erroneous. Kennedy v. Claiborne Cnty., 233 So. 3d 825, 2017 Miss. App. LEXIS 82 (Miss. Ct. App.), cert. denied, — So. 3d —, 2017 Miss. LEXIS 516 (Miss. 2017).

OPINIONS OF THE ATTORNEY GENERAL

Governing boards of public hospitals may, in their discretion, enter into a contract with a private insurance company for a retirement plan for their employees under authority of this section (Code 1942, § 7129-56.5). Ops. A.G., 1963-1965, p 108.

The board of trustees of a community hospital does not have the authority to make a loan to the a county board of supervisors if such a loan would not assist in the operation of the hospital. 1991 Miss. Op. Att'y Gen. 874.

The board of trustees of a community hospital does not have the authority to terminate a lease contract without an event of default on the part of the physician/tenant, and termination of such a lease arrangement is controlled by the terms and conditions of the original contract, assuming it is a valid and lawful lease. 1992 Miss. Op. Att'y Gen. 412.

Board of trustees of county hospital can legally purchase building from local physician and contract with physician as full-time employee of hospital; however, there is apparently no authority empowering boards of trustees of community hospitals to purchase "good will" through purchase of existing medical practice. 1992 Miss. Op. Att'y Gen. 385.

Community hospital may, through contract, provide organizational capital and assistance to Mississippi limited partnership for purposes of establishing outpatient care facilities, including construction, acquisition, operation and maintenance of facilities; likewise, hospital may lease property to partnership to be used as site for outpatient facility, contract for sale of outpatient services to partnership based on fair market value, and provide by contract that operating costs of outpatient facility incurred by hospital and partnership with which hospital has contracted to operate outpatient facility are to be reimbursed out of operational revenue of facility. 1992 Miss. Op. Att'y Gen. 98.

Board of Trustees of county hospital has authority to purchase land, buildings, medical and laboratory equipment, accounts receivable and other tangible items to be utilized in a medical practice but has no such authority to purchase intangibles such as good will, patient referrals, etc. 1992 Miss. Op. Att'y Gen. 660.

Where there is no existing board for community hospital, supervisor's districts that own hospital may not, under Miss. Const. Sec. 183, execute guaranty as required by loan agreement to fund reopening of hospital. 1992 Miss. Op. Att'y Gen. 941.

City and county may pledge ad valorem taxes that have not actually been levied or collected as security for loan to community hospital, for purpose of operation and maintenance, including expenditures for recruitment of physicians as provided for in Miss. Code Section 41-13-35(5)(f). 1993 Miss. Op. Att'y Gen. 50.

Miss. Code Section 41-13-35(5)(g) provides that trustees of hospital system, consisting of two general acute care community hospitals owned by county, can contract with nonprofit corporation. 1993 Miss. Op. Att'y Gen. 1010.

Miss. Code Section 41-13-35 gives board of trustees of community hospital broad authority in governing affairs of hospital, and this authority includes retaining counsel; whether board needs advice of counsel at every meeting or at particular meeting is matter within discretion of board. 1993 Miss. Op. Att'y Gen. 274.

Miss. Code Section 41-13-35(5) authorizes board of trustees to establish equitable wage and salary programs and employment benefits; therefore, board, in its discretion, may reduce salary of administrator or any other employee regardless of whether work load has been reduced. 1993 Miss. Op. Att'y Gen. 274.

Miss. Code Section 41-13-35(1) authorizes board of trustees of community hospital to appoint administrator and to delegate reasonable authority to administrator for operation and maintenance of hospital; whether board should approve purchase of equipment or whether board should delegate some of this responsibility to administrator is matter for board to decide in exercise of sound discretion. 1993 Miss. Op. Att'y Gen. 274.

Miss. Code Section 41-13-35(3) gives hospital board broad authority and responsibility for governing community hospital. 1993 Miss. Op. Att'y Gen. 274.

Hospital board of trustees has authority to remove any employee of community hospital pursuant to Miss. Code Section 41-13-35. 1993 Miss. Op. Att'y Gen. 274.

Section 41-13-29(5) provides for compensation of trustees in form of per diem payments in amount established in Section 25-3-69 and no other compensation is provided; trustees for community hospital are not employees within meaning of Section 41-13-35(5)(b) for purposes of hospital's self-funded medical plan. 1994 Miss. Op. Att'y Gen. 852.

Section 41-13-35(5)(n) authorizes the Board of Trustees of a community hospital to enter into contracts with an insurance reciprocal established pursuant to and operated in accordance with Section 41-13-10 et seq. 1995 Miss. Op. Att'y Gen. 542.

Based upon Section 41-13-35(o), approval of the owner is required only if such acquisition includes the purchase of real property. Otherwise, the ratification of the owner is not legally required. 1996 Miss. Op. Att'y Gen. 333.

A community hospital board of trustees would have authority to cause to be incorporated a nonprofit foundation to solicit contributions and raise funds to support the hospital and its activities, but would be subject to the prohibitions against having any financial interest in the foundation; since such boards are entities and persons authorized to act as incorporators of Mississippi nonprofit corporations, a board would be authorized to act as an incorporator of a nonprofit foundation which would solicit contributions to support hospital activities. O'1998 Miss. Op. Att'y Gen. 169.

Paragraph (f) of subsection (5) authorizes hospital trustees, in their discretion, to offer financial and other incentives to recruit and retain the services of physicians in the hospital service area upon the proper findings of the facts necessary for the granting of such assistance set forth in the statute. 1998 Miss. Op. Att'y Gen. 482.

A community hospital is authorized to purchase all tangible assets of a physical therapy and rehabilitation practice for no more than fair market value, without regard to § 31-7-13 and the general bid procedures set out therein; however, if real property is to be purchased as a part of this transaction, such purchase must be ratified by the governing authorities constituting the owner or owners of the hospital; further, no consideration may be paid for intangible assets of the practice. 1999 Miss. Op. Att'y Gen. 215.

A community hospital may hire full-time medical transcriptionists who will complete the majority of their responsibilities while working at home and may also install and maintain the transcription equipment required by each such medical transcriptionist working from home. 1999 Miss. Op. Att'y Gen. 331.

A board of trustees of a community hospital may acquire a building and related equipment from a physician, with the permission of the owner of the community hospital, and lease the building back to the physician, and so long as the center is not a separate identifiable legal entity, a certificate of need therefor is not required. 2000 Miss. Op. Att'y Gen. 17.

A board of trustees of a community hospital may construct and equip a facility suitable for a single service ambulatory surgery facility and may thereafter lease such building and equipment to a physician. 2000 Miss. Op. Att'y Gen. 17.

If a lease of a building and/or equipment is for the purpose of recruiting and financially assisting physicians and other health care practitioners in establishing or relocating practices within the service area of the community hospital, subsection (5)(f) permits boards of trustees of community hospitals to provide financial incentives, including reduced rentals; however, if such a lease is not for such purpose, the board of trustees must obtain rent at the fair market value. 2000 Miss. Op. Att'y Gen. 17.

The board of trustees of a community hospital could act as the sole member of a Mississippi nonprofit corporation formed for the purposes of acquiring and holding real property adjacent to the hospital that would be leased to a Mississippi limited liability company, which would construct a medical office building on the property. 2000 Miss. Op. Att'y Gen. 36.

Certificates of need, licenses and permits, which empower community hospitals to exist and provide medical services, are necessarily owned by the owners of the community hospital, but are managed and operated by its board of trustees; applications for new certificates of need by an existing community hospital are effectively in the name of the owner but must be made by its board of trustees. 2000 Miss. Op. Att'y Gen. 156.

Pursuant to subsection (5)(n) and by complying with it in situations it contemplates, the board of trustees of a community hospital has the authority to enter into a limited liability company without the written approval of the board of supervisors so long as no capital contribution is made to the company. 2000 Miss. Op. Att'y Gen. 156.

A community hospital may pay the cost of continuing education required by state law and associated expenses for the continuing education of paramedics who have agreed to work for the hospital for a stipulated period of time. 2000 Miss. Op. Att'y Gen. 646.

The proviso clause of subsection (5)(k) applies to new debt and new pledges in any given year, and does not require or contemplate a reauthorization of debt incurred or pledges made in prior years. 2001 Miss. Op. Att'y Gen. 646.

The board of trustees of a community hospital has authority to contract with the hospital administrator for the furnishing of a car, provided that the car part of the compensation package and is included in the administrator's contract as part of the compensation package and is not additional compensation for services already rendered. 2002 Miss. Op. Att'y Gen. 59.

A community hospital may not exceed the bounds of its service area and, therefore, a county, as the owner of a community hospital, does not have authority to effect the transfer, under the guise of a lease, of a community hospital's assets, including licenses and licensed beds, to a for-profit corporation which will then use those licenses and licensed beds to open an existing, non-licensed hospital facility owned by it in another county not shown to be in its service area. 2002 Miss. Op. Att'y Gen. 273.

Pursuant to Section 41-13-35(5)(g), the board of trustees of a community hospital may enter into a lease agreement with an long term acute care (LTAC) hospital and, further, the board may enter into a contract with the LTAC hospital for provision of designated ancillary services. 2003 Miss. Op. Att'y Gen. 97.

Under Section 41-13-35(5)(f) the board of trustees, in its discretion, may offer financial assistance to a hospital staffed physician already established in the service area for the purpose of defraying the cost of the physician's professional malpractice insurance premiums, upon proper findings of facts necessary for the granting of such assistance set forth in the statute. O'2003 Miss. Op. Att'y Gen. 173.

It is clearly within the authority of the board of trustees of the Delta Regional Medical Center to establish an employee benefit and incentive program which becomes part of the employment contract. 2003 Miss. Op. Att'y Gen. 338.

The board of trustees of a community hospital may adopt a disciplinary program for employees based on established parking policies. In turn, the hospital administrator has the power to enforce compliance with and obedience to that program. 2003 Miss. Op. Att'y Gen. 515.

A community hospital has the authority to include a default provision in a contract for billing of patient services unless that provision is "expressly prohibited by applicable statutory or constitutional provisions." 2004 Miss. Op. Att'y Gen. 1.

Whether a community hospital may properly consider accounts with payment arrangements "current" and "not in default" as long as the patient complies with the agreed payment schedule is a factual determination which is left to the discretion of the board of trustees. 2004 Miss. Op. Att'y Gen. 1.

The board of trustees of a community hospital is empowered to enter into a contract with several physicians whereby a specialized healthcare facility will be jointly operated, and the contract may include provisions whereby the hospital will provide hospital space, certain equipment and services. Opinion duplicated in Brown, Apr. 2, 2004, A.G. Op.04-0131.2004 Miss. Op. Att'y Gen. 139.

Subdivision (5)(b) of this section provides the Hospital System the ability to adopt and administer an ineligible 457(f) plan. This opinion does not contradict earlier opinions nor supersede them in that they relate to the eligible 457(b) plan as provided for in §§ 25-14-1 et seq. 2004 Miss. Op. Att'y Gen. 660.

The board of trustees of a community hospital is empowered to enter into a contract with a private for-profit corporation for the purpose of jointly developing and operating an assisted living facility at the hospital premises. O'2004 Miss. Op. Att'y Gen. 175.

Boards of trustees of community hospitals have broad powers under this section, including the power to provide ambulance service or to contract with any third party, public or private, to provide such service. As such, the board of trustees of a community hospital would not be required to use an ambulance service that has been designated by the county board of supervisors. 2004 Miss. Op. Att'y Gen. 295.

A participating community hospital would not be authorized to make matching employer contributions in the deferred compensation program authorized under Sections 25-14-1 et seq. 2006 Miss. Op. Att'y Gen. 241.

While the board of trustees of a community hospital is not liable for payment of the taxes on the leasehold interest of a clinic used and occupied by the private physicians and may not pay the taxes for the physicians, the board may provide funds to the physicians as an incentive. 2006 Miss. Op. Att'y Gen. 629.

RESEARCH REFERENCES

ALR.

Medical malpractice: hospital's liability for injury allegedly caused by failure to have properly qualified staff. 62 A.L.R.4th 692.

Am. Jur.

9A Am. Jur. Legal Forms 2d, Hospitals and Asylums § 136:54 (agreement between hospital and management services corporation).

§ 41-13-36. Employment of administrator; administrator's powers and duties.

(1) A board of trustees may enter into a contract of employment with an administrator, the duration of which shall not exceed five (5) years, but which may periodically be renewed for additional years, provided that the duration of any such renewal contract shall not exceed five (5) years.

(2) The administrator shall be the chief executive officer of the community hospital. Subject to any conflicting bylaws, resolutions, rules or regulations adopted by the board of trustees, the administrator's duties and powers shall include, but not be limited to, the following:

(a) To employ and discharge employees, as needed for the efficient performance of the business of the community hospital and prescribe their duties;

(b) To supervise and control the records, accounts, buildings and property of the community hospital and all internal affairs, and maintain discipline therein, and enforce compliance with, and obedience to, all rules, bylaws and regulations adopted by the board of trustees for the government, discipline and management of said hospital, and its employees and staff.

(c) To attend meetings of the board of trustees and to keep the trustees advised of hospital business.

(d) To exercise any of the powers of the board of trustees as described in Section 41-13-35, Mississippi Code of 1972, which have been delegated, by resolution or through the board bylaws, to the administrator.

HISTORY:

Laws, 1985, ch. 511, § 7, eff from and after July 1, 1985.

Editor's Notes —

Laws of 1985, ch. 511, §§ 1, 10, eff from and after July 1, 1985, provide as follows:

"SECTION 1. It is the intent and purpose of this act to clarify and expand the power of boards of trustees of community hospitals so as to allow such community hospitals to operate efficiently, to offer competitive health care services, to respond more effectively to new developments and regulatory changes in the health care area and to continue to serve and promote the health and welfare of the citizens of the State of Mississippi. This act shall be liberally construed so as to give effect to such intent and purpose.

"SECTION 10. This act shall not affect any rights, duties or obligations heretofore granted or imposed by local and private legislation heretofore enacted for the benefit of any owner or community hospital, and the provisions of this act shall be supplemental to and shall not restrict or repeal any general or special authority, powers, rights or privileges with respect to community hospitals heretofore conferred on board of trustees."

JUDICIAL DECISIONS

1. In general.

This section does not create a property right in employment. Levens v. Campbell, 733 So. 2d 753, 1999 Miss. LEXIS 32 (Miss. 1999).

OPINIONS OF THE ATTORNEY GENERAL

The board of trustees of a community hospital may adopt a disciplinary program for employees based on established parking policies. In turn, the hospital administrator has the power to enforce compliance with and obedience to that program. 2003 Miss. Op. Att'y Gen. 515.

RESEARCH REFERENCES

ALR.

Medical malpractice: hospital's liability for injury allegedly caused by failure to have properly qualified staff. 62 A.L.R.4th 692.

Wrongful discharge based on public policy derived from professional ethics codes. 52 A.L.R.5th 405.

Negligent discharge of employee. 53 A.L.R.5th 219.

Am. Jur.

9A Am. Jur. Legal Forms 2d, Hospitals and Asylums § 136:54 (agreement between hospital and management services corporation).

§ 41-13-37. Repealed.

Repealed by Laws, 1982, ch. 395, § 6, eff from and after July 1, 1982.

[1942, § 7129-56.5; Laws, 1958, ch. 363, § 4; Laws, 1966, chs. 460, 482; Laws, 1968, ch. 443, § 1]

Editor's Notes —

Former § 41-13-37 authorized trustees to obtain liability insurance.

§ 41-13-38. Provisions of certain loans by hospital; financial assistance to nonprofit groups.

(1) Any loan agreement entered into between a community hospital and a physician, employee or student pursuant to Section 41-13-35, Mississippi Code of 1972, shall contain a provision for repayment to the hospital no later than ten (10) years after the final date upon which any such payments are made, with or without interest. In the event of a default in repayment of a loan

obligation, the community hospital shall be entitled to reasonable attorney's fees expended to collect the obligation and to all other rights and remedies of a general creditor. No loan agreement with a physician shall impose any condition of admitting a certain number or quota of the physician's patients to the community hospital.

(2) The board of trustees may provide financial assistance or provide grants to nonprofit health-care provider groups and other recognized nonprofit entities and charities where it is determined by the board that such action will benefit the health or welfare of the citizens of the service area.

HISTORY:

Laws, 1985, ch. 511, § 8, eff from and after July 1, 1985.

Editor's Notes —

Laws of 1985, ch. 511, §§ 1, 10, eff from and after July 1, 1985, provide as follows:

"SECTION 1. It is the intent and purpose of this act to clarify and expand the power of boards of trustees of community hospitals so as to allow such community hospitals to operate efficiently, to offer competitive health care services, to respond more effectively to new developments and regulatory changes in the health care area and to continue to serve and promote the health and welfare of the citizens of the State of Mississippi. This act shall be liberally construed so as to give effect to such intent and purpose.

"SECTION 10. This act shall not affect any rights, duties or obligations heretofore granted or imposed by local and private legislation heretofore enacted for the benefit of any owner or community hospital, and the provisions of this act shall be supplemental to and shall not restrict or repeal any general or special authority, powers, rights or privileges with respect to community hospitals heretofore conferred on board of trustees."

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 41-13-38(2), which authorizes community hospitals to provide financial assistance and grants to nonprofit groups, permits board of trustees of hospital to provide financial assistance and grants to nonprofit health care provider groups from time to time, provided that board makes determination at time of each grant that such arrangement will benefit health or welfare of citizens of service area of hospital; however, no binding agreement which commits hospital to program of future grants or assistance may be entered into, for reason that these findings must be found to exist at time of each instance of financial assistance; also, absent specific statutory authority, no agreement of any kind can be made which purports to bind hospital beyond term of office of majority of members of board which enters into such agreement. 1993 Miss. Op. Att'y Gen. 844.

Miss. Code Section 41-13-38 authorizes community hospital boards of trustees to provide financial assistance to nonprofit health care provider groups and other recognized nonprofit entities "where it is determined by the board that such action will benefit the health or welfare of the citizens of the service area"; this includes financial assistance in form of in-kind support and services. 1993 Miss. Op. Att'y Gen. 1010.

The board of trustees of a public hospital may provide grants and financial assistance to a county health department for the purpose of funding health services provided by such department to the hospital so long as the hospital board makes the requisite determination that the proposed assistance "will benefit the health or welfare of the citizens of the service area" and includes such determination in the minutes of the board each time a grant or contribution of financial assistance is proposed. 1997 Miss. Op. Att'y Gen. 490.

The board of trustees of a hospital may provide financial assistance in the form of grants of cash and/or in-kind support and services to a nonprofit health care provider where it is determined by the board that such action will benefit the health or welfare of the citizens of the service area. 1997 Miss. Op. Att'y Gen. 782.

If a hospital board of trustees determines that such action will benefit the health or welfare of the citizens of the service area, then it may provide financial assistance to a nonprofit health care provider in the form of cash, loans, and/or in-kind support services. 1998 Miss. Op. Att'y Gen. 269.

While the board of trustees of a community hospital is not liable for payment of the taxes on the leasehold interest of a clinic used and occupied by the private physicians and may not pay the taxes for the physicians, the board may provide funds to the physicians as an incentive. 2006 Miss. Op. Att'y Gen. 629.

In the process of "winding down" its operations, the Board of Trustees of the Beat 4 Community Hospital, owned by Newton county, is authorized under Miss. Code Ann. § 41-13-38(2) to disburse its remaining funds to Newton Hospital, Inc., a privately-owned non-profit hospital corporation which is building the new Newton County Hospital, upon a finding made by the Beat 4 Community Hospital Board of Trustees and the Newton County Board of Supervisors, and recorded in their minutes, that such action would benefit the health or welfare of the citizens of the service area. Monroe, March 16, 2007, A.G. Op. #00109, 2007 Miss. AG LEXIS 105.

§ 41-13-39. Trustees may establish day care centers.

The board of trustees of any hospital provided for in Sections 41-13-27 through 41-13-31 shall have full authority in its discretion to operate a child care center for the benefit of its employees and other personnel. Such child care center shall be operated as an integral part of the hospital and, if not located on the premises dedicated for hospital purposes, shall be located on such other real property, whether or not adjacent to the hospital premises, that may be purchased, leased or otherwise provided as in the case of hospitals and other related facilities, by the governing authorities of the counties, cities and towns, supervisors districts or election districts jointly or separately interested in the operation of the hospital. If such child care centers be leased, the rental therefor shall be paid from hospital funds, and the hospital board of trustees may in its discretion make charges to its employees and other personnel for child care services. In the event that child care centers shall hereafter be subject to licensure by an agency of the State of Mississippi other than the licensing agency for hospitals, child care centers established hereunder shall nevertheless be subject to inspection, approval and licensure by the hospital licensing agency.

HISTORY:

Codes, 1942, § 7129-56.5; Laws, 1958, chs. 363, § 4; Laws, 1966, chs. 460, 482; Laws, 1968, ch. 443, § 1, eff from and after passage (approved August 6, 1968).

Editor's Notes —

Sections 41-13-27 and 41-13-31 referred to in this section were repealed by Laws of 1982, ch 395, § 6, eff from and after July 1, 1982.

OPINIONS OF THE ATTORNEY GENERAL

Governing boards of public hospitals may, in their discretion, enter into a contract with a private insurance company for a retirement plan for their employees under authority of this section (Code 1942, § 7129-56.5). Ops. A.G., 1963-1965, p 108.

§ 41-13-41. Repealed.

Repealed by Laws, 1978, ch. 332, § 2, eff from and after July 1, 1978. [Laws, 1968, ch. 296, §§ 1, 4]

Editor's Notes —

Former § 41-13-41, by definition of terms, limited the application of that section and §§ 41-13-43, 41-13-45 to class 1 counties, and called for a liberal construction of §§ 41-13-41 through 41-13-45.

§§ 41-13-43 and 41-13-45. Repealed.

Repealed by Laws, 1982, ch. 395, § 6, eff from and after July 1, 1982.

§ 41-13-43. [Codes, 1942, § 7129-55.6; Laws, 1968, ch. 296, § 2; Laws, 1978, ch. 332, § 1]

§ 41-13-45. [Codes, 1942, § 7129-55.7; Laws, 1968, ch. 296, § 3]

Editor's Notes —

Former § 41-13-43 specified additional powers of trustees in certain counties.

Former § 41-13-45 authorized board of supervisors to provide facilities for expanded health care services.

§ 41-13-47. Proposed budget; reports.

On or before the first Monday in September of each year, the said board of trustees shall make, enter on its minutes and file with the owner or owners, separately or jointly interested in said hospital, a proposed budget based on anticipated income and expenditures for the ensuing fiscal year. Such budget, as submitted or amended, shall be approved by the said owner or owners, as the case may be, which approval shall be evidenced by a proper order recorded upon the minutes of each such owner.

On or before the first Monday in March of each year, said board of trustees shall also make, enter on its minutes and file with such owner or owners, a full fiscal year report which shall contain a complete and correct accounting of all funds received and expended for all hospital purposes.

HISTORY:

Codes, 1942, § 7129-57; Laws, 1944, ch. 277, § 7; Laws, 1958, ch. 363, § 5; Laws, 1985, ch. 511, § 9; Laws, 2009, ch. 338, § 1, eff from and after July 1, 2009.

Editor's Notes —

Laws of 1985, ch. 511, §§ 1, 10, eff from and after July 1, 1985, provide as follows:

"SECTION 1. It is the intent and purpose of this act to clarify and expand the power of boards of trustees of community hospitals so as to allow such community hospitals to operate efficiently, to offer competitive health care services, to respond more effectively to new developments and regulatory changes in the health care area and to continue to serve and promote the health and welfare of the citizens of the State of Mississippi. This act shall be liberally construed so as to give effect to such intent and purpose.

"SECTION 10. This act shall not affect any rights, duties or obligations heretofore granted or imposed by local and private legislation heretofore enacted for the benefit of any owner or community hospital, and the provisions of this act shall be supplemental to and shall not restrict or repeal any general or special authority, powers, rights or privileges with respect to community hospitals heretofore conferred on board of trustees."

Cross References —

Depository for county and municipal hospital funds, see § 27-105-365.

JUDICIAL DECISIONS

1. In general.

No provision is made as to liability of hospital board members for unauthorized or wrongful appropriation of hospital funds; hence such liability is governed by the common law rule that a public officer acting judicially or quasi-judicially is not liable if he acted in good faith within the scope of the subject matter over which he is given jurisdiction. Golding v. Salter, 234 Miss. 567, 107 So. 2d 348, 1958 Miss. LEXIS 530 (Miss. 1958).

§ 41-13-49. Definitions of terms used in this section and Section 41-13-51; applicability of this section and Section 41-13-51; retirement plan administrator to provide certain information to the public, plan participants and plan beneficiaries.

(1) As used in this section and Section 41-13-51, the following terms shall be defined as provided in this subsection:

(a) "Administrator" means the person primarily responsible for the management of the retirement plan or, if no person is clearly designated, the trustee of the retirement plan who has the ultimate authority to manage the plan;

(b) "Beneficiary" means a person, other than the participant, who is designated by a participant or by the retirement plan to receive a benefit under the retirement plan;

(c) "Defined benefit retirement plan" means a retirement plan other than a defined contribution retirement plan;

(d) "Defined contribution retirement plan" means a retirement plan that provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account, and any income, expenses, gains and losses credited or charged to the account and any forfeitures of accounts of other participants that may be allocated to the participant's account;

(e) "Governing law" means state and local laws establishing or authorizing the creation of the retirement plan and the principal state and local laws and regulations governing the management of the retirement plan or assets of either;

(f) "Nonforfeitable benefit" means an immediate or deferred benefit that arises from a participant's service, is unconditional, and is enforceable against the retirement plan;

(g) "Participant" means an individual who is or has been an employee enrolled in the retirement plan and who is or may become eligible to receive or is currently receiving a benefit under the retirement plan, or whose beneficiaries are or may become eligible to receive a benefit. The term does not include an individual who is no longer an employee of the community hospital and has not accrued any nonforfeitable benefits under the retirement plan;

(h) "Retirement plan" means a plan of rights and obligations that a community hospital establishes or maintains and that, by its express terms or as a result of surrounding circumstances, provides retirement income to employees;

(i) "Trustee" means a person who has ultimate authority to manage a retirement plan or to invest or manage its assets.

(2) This section and Section 41-13-51 apply to any defined benefit retirement plan established or maintained by a community hospital for its employees, whether the membership of the retirement plan is open or closed to new

members. This section and Section 41-13-51 do not apply to any community hospital that is a member of the Public Employees' Retirement System.

(3) The administrator of the retirement plan shall prepare and disseminate:

(a) A summary plan description of the retirement plan;

(b) A summary description of any material modification in the terms of the retirement plan and any material change in the information required to be contained in the summary plan description, to the extent the modification or change has not been integrated into an updated summary plan description;

(c) An annual disclosure of financial and actuarial status; and

(d) An annual report.

(4) The administrator shall make available for public examination in the principal office of the administrator and in other places if necessary to make the information reasonably available to participants:

(a) The governing law of the retirement plan;

(b) The most recent summary plan description;

(c) Summary descriptions of modifications or changes described in subsection (3)(b) of this section that have been provided to participants and beneficiaries but not yet integrated into the summary plan description;

(d) The most recent annual disclosure of financial and actuarial status; and

(e) The most recent annual report.

(5) Upon written request by a participant, beneficiary or member of the public, the administrator shall provide a copy of any publication described in subsection (4) of this section.

(6) The administrator shall furnish to each participant and to each beneficiary who is receiving benefits under the retirement plan:

(a) A copy of the most recent summary plan description, along with any summary descriptions of modifications or changes described in subsection (3)(b) of this section, within three (3) months after a person becomes a participant or, in the case of a beneficiary, within three (3) months after a person first receives benefits, or, if later, within four (4) months after the retirement plan becomes subject to this section;

(b) The summary description of any modifications or changes described in subsection (3)(b) of this section, within seven (7) months after the end of the fiscal year in which a modification or change has been made;

(c) A copy of an updated summary plan description that integrates all modifications and changes at intervals not exceeding five (5) years; and

(d) The annual report within seven (7) months after the end of each fiscal year.

(7) The administrator shall provide to a participant or beneficiary a statement containing information that would permit the participant or beneficiary to estimate projected benefits reasonably, to the extent the information is regularly maintained by the retirement plan. The information shall be provided with the annual report or upon written request of the participant or

beneficiary. The information need not be provided to a participant or beneficiary who is currently receiving benefits.

(8) A participant who is not currently receiving benefits is entitled without charge to one (1) statement under subsection (7) of this section during any fiscal year. The administrator shall provide the statements within thirty (30) days after the participant's or beneficiary's request.

HISTORY:

Laws, 2015, ch. 484, § 9, eff from and after Jan. 1, 2016.

Editor's Notes —

A former § 41-13-49 [Codes, 1942, § 7129-51; Laws, 1944, ch. 277, § 2; Laws, 1946, ch. 412, § 2; Laws, 1948, ch. 435, § 2; Laws, 1954, ch. 294, § 2; Laws, 1966, ch. 459, § 1; Laws, 1968, ch. 442, § 2; Laws, 1970, ch. 321, § 1; Repealed by Laws, 1982, ch. 395, § 6, effective from and after July 1, 1982] authorized supervisors districts to contribute to support of municipal hospital.

§ 41-13-51. Contents of summary plan description, annual disclosure of financial and actuarial status, and annual report.

(1) A summary plan description and a summary description of modifications or changes under Section 41-13-49(3)(b) shall be written in a manner calculated to be understood by the average participant and be accurate and sufficiently comprehensive reasonably to inform the participants and beneficiaries of their rights and obligations under the retirement plan.

(2) A summary plan description shall contain:

(a) The name of the retirement plan;

(b) The name and business address of the administrator;

(c) The name and business address of each agent for service of process;

(d) Citations to the governing law of the retirement plan;

(e) A description of the retirement plan's requirements respecting eligibility for participation and benefits;

(f) A description of the retirement plan's provisions providing for nonforfeitable benefits;

(g) A description of circumstances that may result in disqualification, ineligibility or denial or loss of benefits;

(h) A description of the benefits provided by the retirement plan, including the manner of calculating benefits and any benefits provided for spouses and survivors;

(i) The source of financing of the retirement plan;

(j) The identity of any organization through which benefits are provided;

(k) The date the fiscal year ends;

(*l*) The procedures to claim benefits under the retirement plan and the administrative procedures available under the retirement plan for the redress of claims that are denied in whole or in part; and

(m) Notice of the availability of additional information under Section 41-13-49(4), (5), (7) and (8).

(3) An annual disclosure of financial and actuarial status shall contain:

(a) The name of the retirement plan;

(b) The name and business address of the administrator;

(c) The name and business address of each trustee and each member of a trustee board and a brief description of how the trustee or member was selected;

(d) The name and business address of each agent for the service of process;

(e) The number of employees covered by the retirement plan;

(f) Financial statements and notes to the financial statements in conformity with generally accepted accounting principles;

(g) An opinion on the financial statements by a qualified public accountant in conformity with generally accepted auditing standards;

(h) Actuarial schedules and notes to the actuarial schedules in conformity with generally accepted actuarial principles and practices for measuring pension obligations;

(i) An opinion by a qualified actuary that the actuarial schedules are complete and accurate to the best of the actuary's knowledge, that each assumption and method used in preparing the schedules is reasonable, that the assumptions and methods in the aggregate are reasonable, and that the assumptions and methods in combination offer the actuary's best estimate of anticipated experience;

(j) A description of any material interest, other than the interest in the retirement plan itself, held by the community hospital or any employee organization representing employees covered by the retirement plan in any material transaction with the retirement plan within the last three (3) years or proposed to be effected;

(k) A description of any material interest held by any trustee, administrator or employee who is a fiduciary with respect to the investment and management of assets of the retirement plan, or by a related person, in any material transaction with the retirement plan within the last three (3) years or proposed to be effected;

(*l*) A schedule of the rates of return, net of total investment expense, on assets of the retirement plan overall and on assets aggregated by category over the most recent one-, three-, five- and ten-year periods, to the extent available, and the rates of return on appropriate benchmarks for assets of the retirement plan overall and for each category over each period;

(m) A schedule of the sum of total investment expense and total general administrative expense for the fiscal year expressed as a percentage of the fair value of assets of the retirement plan on the last day of the fiscal year, and an equivalent percentage for the preceding five (5) fiscal years; and

(n) A schedule of all assets held for investment purposes on the last day of the fiscal year aggregated and identified by issuer, borrower, lessor or similar party to the transaction stating, if relevant, the asset's maturity date, rate of interest, par or maturity value, number of shares, cost and fair value and identifying any asset that is in default or classified as uncollectible.

(4) An annual report shall contain:

(a) The name and business address of each trustee and each member of a trustee board;

(b) The financial statements, but not the notes, required by subsection (3)(f) of this section;

(c) The actuarial schedules, but not the notes, required by subsection (3)(h) of this section;

(d) The schedules described in subsection (3)(*l*) and (m) of this section;

(e) A brief description of and information about how to interpret the statements and schedules;

(f) Other material necessary to summarize fairly and accurately the annual disclosure of financial and actuarial status; and

(g) Notice of the availability of additional information under Section 41-13-49(4), (5), (7) and (8).

HISTORY:

Laws, 2015, ch. 484, § 10, eff from and after Jan. 1, 2016.

Editor's Notes —

A former § 41-13-51 [Codes, 1942, § 7129-53; Laws, 1944, ch. 277, § 3A; Repealed by Laws, 1982, ch. 395, § 6, effective from and after July 1, 1982] authorized the maintenance of wards for pay patients, and fixed fees and charges.

§ 41-13-53. Benefits with respect to ownership and operation of hospitals organized under other laws.

(1) In any case where a hospital has been or is hereafter established under any provisions of law other than Sections 41-13-15 through 41-13-51, and is owned and operated separately or jointly by one or more counties, cities, towns, supervisors districts or election districts or combinations thereof, the respective governing authority of each such political subdivision or part of a political subdivision interested therein may, in its discretion, by adoption of the resolution hereinafter provided for, obtain for itself, its officers and members, the same authority, powers, rights, privileges and immunities with respect to establishing, erecting, building, constructing, remodeling, adding to, acquiring, equipping, furnishing, and operating and maintaining such hospital as if such hospital were originally established and organized under the provisions of said sections.

(2) The aforesaid resolution shall be duly adopted at any regular or special meeting, or any adjournment of a regular or special meeting, of the governing authority and shall be duly spread upon its minutes. Any such resolution shall be sufficient for the purposes hereof if it indicates an intention to obtain the benefits of this section or Sections 41-13-15 through 41-13-51. Multiple resolutions shall not be required in the case of a board of supervisors acting in behalf of more than one (1) supervisors district or election district or any combination of such districts. In the case of a hospital jointly owned and operated such resolution is to be adopted by the respective governing authority of each of the various counties, cities, towns, supervisors' districts or election districts interested therein.

(3) The adoption of the aforesaid resolution shall have the effect of also conferring on and delegating to any board of trustees, board of commissioners or other governing board established for the operation and maintenance of

such hospital, and the officers and members of such governing board, the same authority, powers, rights, privileges and immunities with respect to the operation and maintenance of the hospital as are conferred on the boards of trustees, and the officers and members thereof, of community hospitals established and organized under the provisions of Sections 41-13-15 through 41-13-51.

(4) The provisions of this section shall be supplemental to, and shall not restrict, supplant, amend or repeal any general or special authority, powers, rights, privileges and immunities with respect to hospitals heretofore or hereafter conferred on boards of supervisors, municipal governing authorities and hospital governing boards, or the officers and members of such boards or governing authorities, except as the same may delegate authority, powers, rights and privileges to hospital governing boards and the officers and members thereof. Adoption of the resolution provided for herein shall not amend the method of appointing or electing the officers and members of such hospital governing boards or their tenure of office. Nothing contained herein shall be construed to repeal any local and private law or any part or provision thereof authorizing or establishing a public hospital.

HISTORY:

Codes, 1942, § 7129-61; Laws, 1962, ch. 404, §§ 1-4.

Editor's Notes —

Section 41-13-51 referred to in this section was repealed by Laws of 1982, ch. 395, § 6, eff from and after July 1, 1982.

Cross References —

Definition of terms "established" or "hereafter established," see § 1-3-9.

TRUST TO INSURE AGAINST PUBLIC LIABILITY CLAIMS

Sec.

41-13-101. Authorization of trust to insure participating hospitals against public liability claims.
41-13-103. Trustees; powers; liability; investments.
41-13-105. Liability of participating hospitals.
41-13-107. Trust not subject to insurance laws.

§ 41-13-101. Authorization of trust to insure participating hospitals against public liability claims.

There is hereby authorized the establishment, maintenance, administration and operation of any trust established by agreement of any hospitals or other health-care units licensed as such by the State of Mississippi, including without limitation, community hospitals established under this chapter (hereinafter referred to as "hospitals") as grantors, with such hospitals as beneficiaries, for the purpose of insuring against general public liability claims based upon acts or omissions of such hospitals, including without limitation, claims based upon malpractice. Such hospitals may, by trust agreement among themselves and a trustee or trustees of their selection, specify the terms, conditions and provisions of such a trust.

HISTORY:

Laws, 1982, ch. 370, § 1; repealed, Laws, 1984, ch. 495, § 38; reenacted and amended, Laws, 1985, ch. 474, § 35; Laws, 1986, ch. 438, § 21; Laws, 1987, ch. 480, § 1, eff from and after passage (approved April 15, 1987).

Cross References —

Immunity of state and political subdivisions from liability and suit for torts and torts of its employees, see §§ 11-46-1 et seq.

Participation in a comprehensive plan of one or more policies of liability insurance procured and administered by the Department of Finance and Administration, see § 11-46-17.

Powers and liabilities of trustees, see § 41-13-103.

Trust not being subject to insurance laws, see § 41-13-107.

RESEARCH REFERENCES

Am. Jur.

76 Am. Jur. 2d, Trusts §§ 16, 75, 107 et seq.

1B Am. Jur. Pl & Pr Forms (Rev), Agency, Form 224.1 (complaint, petition, or declaration – allegation – against hospital – reliance on apparent authority of physician – hospital held itself out as full service hospital).

CJS.

90 C.J.S., Trusts § 18.

90 C.J.S., Trusts §§ 234, 235-248.

§ 41-13-103. Trustees; powers; liability; investments.

The trustees of trusts established pursuant to Section 41-13-101 shall hold the legal title to all property at any time belonging to the trust. They shall have control over such property as well as the control and management of the business and affairs of the trust. Liability to third persons for any act, omission or obligation of a trustee of a trust, when acting in such capacity, shall extend to the whole of the trust estate or so much thereof as may be necessary to discharge such obligation, but no trustee shall be personally liable for any such act, omission or obligation. The trustees shall have such powers as to the investment of the trust estate as may be set out in the declaration of trust. However, the investments of the trust shall be limited to the same type, kind and quality as those required of a domestic casualty insurer. Without limiting the generality of the foregoing, the trustees shall have any powers, whether conferred upon them by the agreement of trust or otherwise, to perform all acts necessary or desirable to the conduct of the business of a public liability insurer.

HISTORY:

Laws, 1982, ch. 370, § 2; repealed, Laws, 1984, ch. 495, § 38; reenacted and amended, Laws, 1985, ch. 474, § 36; Laws, 1986, ch. 438, § 22; Laws, 1987, ch. 480, § 2, eff from and after passage (approved April 15, 1987).

Cross References —

Immunity of state and political subdivisions from liability and suit for torts and torts of its employees, see §§ 11-46-1 et seq.

Participation in a comprehensive plan of one or more policies of liability insurance procured and administered by the Department of Finance and Administration, see § 11-46-17.

RESEARCH REFERENCES

Am. Jur.
76 Am. Jur. 2d, Trusts §§ 271 et seq., 283 et seq., 344 et seq.

CJS.
90 C.J.S., Trusts §§ 323 et seq., 325 et seq.

§ 41-13-105. Liability of participating hospitals.

No hospital which is a participant in such a trust, as grantor, member, beneficiary or otherwise, shall be liable or obligated to the trust, to the trustee, to any other grantor, member or beneficiary, to any creditor of the trust or to any other person by virtue of its participation other than for the payment of its full agreed contribution to the trust in accordance with the trust agreement. Without limiting the generality of the foregoing, no participating hospital shall incur any other liability of any nature whatever because of or arising out of its participation in such a trust.

HISTORY:
Laws, 1982, ch. 370, § 3; repealed, Laws, 1984, ch. 495, § 38; reenacted and amended, Laws, 1985, ch. 474, § 37; Laws, 1986, ch. 438, § 23; Laws, 1987, ch. 480, § 3, eff from and after passage (approved April 15, 1987).

Cross References —
Immunity of state and political subdivisions from liability and suit for torts and torts of its employees, see §§ 11-46-1 et seq.

Participation in a comprehensive plan of one or more policies of liability insurance procured and administered by the Department of Finance and Administration, see § 11-46-17.

RESEARCH REFERENCES

Am. Jur.
76 Am. Jur. 2d, Trusts §§ 73, 74.

CJS.
90, 90A C.J.S., Trusts §§ 199, 364 et seq.

§ 41-13-107. Trust not subject to insurance laws.

Neither the establishment of a trust under Section 41-13-101 nor the participation of a hospital in such trust shall constitute a “contract of insurance” within the meaning of Section 83-5-5, and the trust shall not be considered an “insurance company” or any other concern subject to the inspection and supervision of the Insurance Commissioner within the meaning of Section 83-5-1 or of the Insurance Commission within the meaning of Section 83-3-1 et seq.

HISTORY:
Laws, 1982, ch. 370, § 4; repealed, Laws, 1984, ch. 495, § 38; reenacted and amended, Laws, 1985, ch. 474, § 38; Laws, 1986, ch. 438, § 24; Laws, 1987, ch. 480, § 4, eff from and after passage (approved April 15, 1987).

Editor's Notes —
This section contains a reference to the Insurance Commission within the meaning of Section 83-3-1 et seq. Section 83-3-1, which provided for the creation of the Insurance Commission was repealed by Laws of 1987, ch. 422, § 30, eff from and after January 15, 1988. Section 83-3-2 provides that any reference to Insurance Commission shall mean the Commissioner of Insurance.

Cross References —
Immunity of state and political subdivisions from liability and suit for torts and torts of its employees, see §§ 11-46-1 et seq.

Participation in a comprehensive plan of one or more policies of liability insurance procured and administered by the Department of Finance and Administration, see § 11-46-17.

CHAPTER 15.

DEPARTMENT FOR THE PREVENTION OF INSANITY [REPEALED]

Sec.
41-15-1 through 41-15-7. Repealed.

§§ 41-15-1 through 41-15-7. Repealed.

Repealed by Laws, 1974, ch. 567, § 15, eff from and after passage (approved April 23, 1974).

§ 41-15-1. [Laws, 1944, ch. 279, §§ 1, 3; Laws, 1952, ch. 317, §§ 1, 2]
§ 41-15-3. [Laws, 1944, ch. 279, §§ 1, 3; Laws, 1952, ch. 317, §§ 1, 2]
§ 41-15-5. [Laws, 1944, ch. 279, § 2]
§ 41-15-7. [Laws, 1944, ch. 279, § 4; Laws, 1952, ch. 317, § 3]

Editor's Notes —

Former § 41-15-1 created within the state board of health a department for the treatment of certain diseases which could eventually lead to insanity.

Former § 41-15-3 provided for a physician in charge of the department created by former § 41-15-1 and set forth the manner of his selection and his powers and duties.

Former § 41-15-5 dealt with the admission and discharge of patients under the care of the department created by former § 41-15-1.

Former § 41-15-7 dealt with the handling of appropriations and expenditures of the department created by former § 41-15-1.

The 1974 law which repealed these sections created a new state department and board of mental health (see §§ 41-4-1 et seq.), and rescinded the authority formerly vested in the state board of health with respect to mental health (see § 41-4-11(1)). Section 16 of the repealing act provided, in part, that "all powers, duties and responsibilities transferred by this act shall remain under the authority and control of existing state agencies until July 1, 1974."

CHAPTER 17.

STATE MENTAL INSTITUTIONS

Sec.
41-17-1. Establishment of state hospitals and facilities for persons with mental illness.
41-17-3. East Mississippi State Hospital.
41-17-5 through 41-17-9. Repealed.
41-17-11. Furnishing of care for veterans.
41-17-13. Repealed.

§ 41-17-1. Establishment of state hospitals and facilities for persons with mental illness.

Mississippi State Hospital at Whitfield, East Mississippi State Hospital at Meridian, North Mississippi State Hospital at Tupelo, South Mississippi State Hospital at Purvis, the Specialized Treatment Facility for the Emotionally Disturbed in Harrison County, and the Central Mississippi Residential Center at Newton are established for the care and treatment of persons with mental illness, free of charge, except as otherwise provided.

HISTORY:

Codes, 1892, § 2830; 1906, § 3211; Hemingway's 1917, § 5553; 1930, § 4568; 1942, § 6901; Laws, 2002, ch. 350, § 2, eff from and after July 1, 2002.

Cross References —

Constitutional provision for treatment and care of the insane, see Miss. Const. Art. 4, § 86.

Establishment of state board of mental health and state department of mental health, see §§ 41-4-1 et seq.

State department of mental health as governing authority, see § 41-4-11.

Exemption of certain hospital records from requirement of public access, see § 41-9-68.

Mental retardation and illness centers, facilities and services, see §§ 41-19-1 et seq.

Procedures for an individual's procedural and substantive rights during the initial involuntary commitment hearing and thereafter, see §§ 41-21-61 et seq.

Criminal sanctions for unlawfully conspiring to commit an individual to a treatment facility, see § 41-21-107.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Costs.

1. In general.

Trial court erred in dismissing a son's wrongful death action against a state hospital because its director was the hospital's CEO under the Mississippi Tort Claims Act (MTCA) (Miss. Code Ann. § 11-46-1 et seq.), and the son provided pre-suit notice to the proper party; the definition of "State" in the MTCA included hospitals, and the Department of Mental Health was not a substitute for the CEO of the hospital, which was the "state entity." Ivy v. E. Miss. State Hosp., 191 So. 3d 120, 2016 Miss. LEXIS 188 (Miss. 2016).

The provisions of §§ 41-7-71 et seq., which empowered the Mississippi Hospital Reimbursement Commission to seek reimbursement from the estate of one civilly and involuntarily committed for all or part of the cost of care and treatment rendered by a state hospital, constitute an exception to the general rule of § 41-17-1 that persons are entitled to treatment at the Mississippi State Hospital "free of charge"; moreover, in an action seeking reimbursement from the estate of one civilly and involuntarily committed, those provisions did not operate as ex post facto laws, since a previous act required reimbursement from solvent incompetent persons for care and treatment at state mental hospitals, and since the Commission claimed nothing against the estate for care or treatment rendered prior to the statutes' effective date. Chill v. Mississippi Hospital Reimbursement Com., 429 So. 2d 574, 1983 Miss. LEXIS 2563 (Miss. 1983).

2. Costs.

Where an individual had been committed involuntarily, the trial court erred in ruling that the individual's personal insurance would be responsible for the costs associated with his commitment at a private facility when there was no space available at the state institution. In re Bauman, 878 So. 2d 1033, 2004 Miss. App. LEXIS 690 (Miss. Ct. App. 2004).

RESEARCH REFERENCES

ALR.

Validity, construction, application, and effect of Civil Rights of Institutionalized Persons Act, 42 USCS §§ 1997-1997j. 93 A.L.R. Fed. 706.

Am. Jur.

40A Am. Jur. 2d, Hospitals and Asylums § 4.

CJS.

41 C.J.S., Hospitals §§ 2, 3, 15–17.

44 C.J.S., Insane Persons §§ 57 et seq.

Practice References.

Health Care Administration Library (CD-ROM) (Matthew Bender).

Perlin, Mental Disability Law: Civil and Criminal, Second Edition (LexisNexis).

§ 41-17-3. East Mississippi State Hospital.

The state psychiatric hospital and institution established at Meridian by the Act of March 8, 1882, shall continue to exist as a body politic and corporate, under the name of the "East Mississippi State Hospital," with all the privileges conferred and the duties enjoined by law. It may hold and use, as required by law, all the property, real and personal, belonging to or that may be given to it for the purposes of its establishment.

HISTORY:

Codes, 1892, § 1624; 1906, § 1799; Hemingway's 1917, § 4492; 1930, § 4565; 1942, § 6897; Laws, 1928, ch. 141; Laws, 2008, ch. 442, § 14, eff from and after July 1, 2008.

Cross References —

Procedures for and rights during voluntary and involuntary commitment of persons in need of mental treatment, and rights of persons confined in treatment facilities, see §§ 41-21-61 et seq.

JUDICIAL DECISIONS

1. Mississippi Tort Claims Act.

Trial court erred in dismissing a son's wrongful death action against a state hospital because its director was the hospital's CEO under the Mississippi Tort Claims Act (MTCA) (Miss. Code Ann. § 11-46-1 et seq.), and the son provided pre-suit notice to the proper party; the definition of "State" in the MTCA included hospitals, and the Department of Mental Health was not a substitute for the CEO of the hospital, which was the "state entity." Ivy v. E. Miss. State Hosp., 191 So. 3d 120, 2016 Miss. LEXIS 188 (Miss. 2016).

§§ 41-17-5 through 41-17-9. Repealed.

Repealed by Laws, 2008, ch. 442, § 50, effective from and after July 1, 2008.

§ 41-17-5. [Codes, 1857, ch. 12, art. 6; 1871, § 2090; 1880, § 656; 1892, § 2820; 1906, § 3201; Hemingway's 1917, § 5718; 1930, § 4553; 1942, § 6886; Laws, 1898, ch. 67.]

§ 41-17-7. [Codes, 1857, ch. 12, art. 9; 1871, § 2100; 1880, § 658; 1892,

§ 2829; 1906, § 3210; Hemingway's 1917, § 5727; 1930, § 4561; 1942, § 6894.]

§ 41-17-9. [Codes, 1906, § 3229; Hemingway's 1917, § 5571; 1930, § 4566; 1942, § 6899; Laws, 1932, ch. 273.]

Editor's Notes —

Former § 41-17-5 provided certain visitation duties for directors of mental hospitals.

Former § 41-17-7 provided that resident mental hospital officers were exempt from jury service.

Former § 41-17-9 required that a drug store be kept at each mental hospital.

§ 41-17-11. Furnishing of care for veterans.

The directors of the state institutions listed in Section 41-7-73 each may receive any monies that the United States government may offer as federal aid in taking care of and giving special attention to those persons who served with the Armed Forces of the United States during time of war and who are now in or may hereafter be in any of those state institutions. Each of those directors may expend that part of the money paid to him or his institution, according to his best judgment and the requirements of the United States government under which the money is received.

HISTORY:

Codes, 1930, § 4567; 1942, § 6900; Laws, 1922, ch. 301; Laws, 2008, ch. 442, § 15, eff from and after July 1, 2008.

Cross References —

Guardianship of mentally incompetent veterans, see §§ 35-5-1 et seq.

Transfer of veterans to facility operated by United States Veterans Administration or other federal agency, see § 41-21-77.

§ 41-17-13. Repealed.

Repealed by Laws, 2008, ch. 442, § 50, effective from and after July 1, 2008.

[Codes, 1942, § 6883-01; Laws, 1946, ch. 425, §§ 1-3.]

Editor's Notes —

Former § 41-17-13 required separate accommodations at Whitfield for individuals addicted to alcohol or narcotics.

CHAPTER 19.

FACILITIES AND SERVICES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR MENTAL ILLNESS

North Mississippi Regional Center. 41-19-1
Facilities and Services for Individuals with Mental Retardation or Mental Illness. .. 41-19-31
Interagency Commission on Mental Illness and Mental Retardation. [Repealed] .. 41-19-61
Coordination of Services to Mentally Ill and Mentally Retarded. [Repealed] 41-19-81
Contributions by Certain Local Governments to Nonprofit Corporations Assisting Children with Mental Retardation. 41-19-91
Ellisville State School. 41-19-101
South Mississippi Regional Center. 41-19-141
Boswell Regional Center. 41-19-201
Hudspeth Regional Center. 41-19-231
North Mississippi State Hospital and South Mississippi State Hospital. 41-19-251
Central Mississippi Residential Center. 41-19-271
Specialized Treatment Facility in Harrison County. 41-19-291
Mississippi Adolescent Center in Brookhaven. 41-19-301

NORTH MISSISSIPPI REGIONAL CENTER

Sec.
41-19-1. Declaration of purpose.
41-19-3. Location of center.
41-19-5. Construction and equipping of center.
41-19-7. Management and operation of center.
41-19-9 and 41-19-11. Repealed.
41-19-13. Reimbursement.
41-19-15. Penalties.
41-19-17. Designation of North Mississippi Regional Center as state agency for carrying out federal acts pertaining to intellectual disabilities.

§ 41-19-1. Declaration of purpose.

The purpose of Sections 41-19-1 through 41-19-17 is to create, construct, equip and maintain a center, to be located in North Mississippi, for the care and treatment of persons with an intellectual disability, which shall be known as the North Mississippi Regional Center.

HISTORY:

Codes, 1942, § 6900-01; Laws, 1968, ch. 438, § 1; Laws, 1992, ch. 336, § 1; Laws, 2010, ch. 476, § 25, eff from and after passage (approved Apr. 1, 2010).

Cross References —

Establishment of State Board of Mental Health and State Department of Mental Health, see §§ 41-4-1 et seq.

Definition of persons with mental illness or an intellectual disability see § 41-21-61.

Voluntary admissions of persons with mental illness or an intellectual disability, see § 41-21-103.

RESEARCH REFERENCES

ALR.

Validity, construction, application, and effect of Civil Rights of Institutionalized Persons Act, 42 USCS §§ 1997-1997j. 93 A.L.R. Fed. 706.

Am. Jur.

40A Am. Jur. 2d, Hospitals and Asylums § 4.

CJS.

41 C.J.S., Hospitals §§ 2, 3, 15–17.

Practice References.

Health Care Administration Library (CD-ROM) (Matthew Bender).

Carlson, Long-Term Care Advocacy (Matthew Bender).

Perlin, Mental Disability Law: Civil and Criminal, Second Edition (LexisNexis).

§ 41-19-3. Location of center.

The center shall be located on a site selected by the Board of Trustees of Mental Institutions and approved by the Mississippi State Building Commission. The center, however, shall be located as near as possible to an urban area or institution having adequate medical and hospital facilities and shall embrace sufficient land for such agricultural activities as the board may deem necessary for the operation of the center.

Out of funds provided therefor by the Legislature or from any sources, the building commission is hereby authorized to purchase or acquire the necessary land for the location of the center; or the commission may acquire the land by gift, deed, transfer, or other legitimate means; or the center may be located on land belonging to the state or one of its political subdivisions. However, any such land selected shall be transferred or deeded to the State of Mississippi for the sole use of the Board of Trustees of Mental Institutions in carrying out the provisions of Sections 41-19-1 through 41-19-17.

HISTORY:

Codes, 1942, § 6900-02; Laws, 1968, ch. 438, § 2; Laws, 1992, ch. 336, § 2, eff from and after July 1, 1992.

Editor's Notes —

The board of trustees of mental institutions, referred to in this section, was abolished as of July 1, 1974, and its functions transferred to the State Board of Mental Health and the State Department of Mental Health, by Laws of 1974, ch. 567, § 6, effective from and after April 23, 1974. See § 41-4-11.

Section 31-11-1 provides that wherever the term "state building commission" or "building commission" appears in the laws of the state of Mississippi, it shall be construed to mean the governor's office of general services. Section 7-1-451, however, provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross References —

Facility being under jurisdiction and control of state department of mental health, see § 41-4-11(2).

Administration by state board of mental health, see § 41-19-7.

§ 41-19-5. Construction and equipping of center.

With funds provided by the legislature, by direct appropriation or authorized bond issue, with federal matching funds, or with any other available funds, the Mississippi State Building Commission is hereby authorized to construct and equip the necessary residential and service buildings and other facilities to care for approximately five hundred (500) residents. The general design of the center and all construction plans shall be approved and recommended by the board of trustees of mental institutions.

HISTORY:

Codes, 1942, § 6900-03; Laws, 1968, ch. 438, § 3, eff from and after passage (approved June 21, 1968).

Editor's Notes —

The board of trustees of mental institutions, referred to in this section, was abolished as of July 1, 1974 and its functions transferred to the State Board of Mental Health and the State Department of Mental Health, by Laws, 1974, ch. 567, § 6, effective from and after April 23, 1974. See § 41-4-11.

Section 31-11-1 provides that wherever the term "state building commission" or "building commission" appears in the laws of the state of Mississippi, it shall be construed to mean the governor's office of general services. Section 7-1-451, however, provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross References —

State board of mental health succeeding to functions of board of trustees of mental institutions, see § 41-4-11.

§ 41-19-7. Management and operation of center.

The center shall be administered by the State Board of Mental Health. Provisions relating to the admission and care of residents and patients provided for hereinafter shall apply to all institutions for persons with an intellectual disability administered by the board.

HISTORY:

Codes, 1942, § 6900-04; Laws, 1968, ch. 438, § 4; Laws, 1974, ch. 567, § 14; Laws, 2010, ch. 476, § 26, eff from and after passage (approved Apr. 1, 2010).

Cross References —

State department and board of mental health, see §§ 41-4-1 et seq.

Facility being under the jurisdiction and control of the State Department of Mental Health, see § 41-4-11(2).

Proceedings for commitment to state mental institutions, see §§ 41-21-61 et seq.

Prohibition against involuntary commitment of persons whose primary problems are physical disabilities associated with old age or infant birth defects, see § 41-21-73.

Voluntary admissions of persons with mental illness or an intellectual disability, see § 41-21-103.

RESEARCH REFERENCES

ALR.

Validity, construction, application, and effect of Civil Rights of Institutionalized Persons Act, 42 USCS §§ 1997-1997j. 93 A.L.R. Fed. 706.

Am. Jur.

40A Am. Jur. 2d, Hospitals and Asylums §§ 13 et seq.

CJS.

41 C.J.S., Hospitals §§ 2, 3, 15–17.

§§ 41-19-9 and 41-19-11. Repealed.

Repealed by Laws, 1984, ch. 477, § 25, eff from and after July 1, 1984.

§ 41-19-9. [Codes, 1942, § 6900-05; Laws, 1968, ch. 438, § 5]

§ 41-19-11. [Codes, 1942, § 6900-06; Laws, 1968, ch. 438, § 6]

Editor's Notes —

Former § 41-19-9 specified the eligibility for admission to the center.

Former § 41-19-11 specified admission procedures.

§ 41-19-13. Reimbursement.

Persons admitted to the center shall be assessed support and maintenance costs in accordance with the provisions of the state reimbursement laws as they apply to other state institutions.

HISTORY:
Codes, 1942, § 6900-07; Laws, 1968, ch. 438, § 7; Laws, 1992, ch. 336, § 3, eff from and after July 1, 1992.

Cross References —
Liability for care and maintenance of persons in state mental institutions, see § 41-21-79.

§ 41-19-15. Penalties.

Any person who (1) under the provisions of Section 41-19-11, knowingly and unlawfully or improperly causes a person to be adjudged a person with an intellectual disability, (2) procures the escape of a legally committed resident or knowingly conceals an escaped legally committed resident of the center, or (3) unlawfully brings any firearm, deadly weapon or explosive into the center or its grounds, or passes any thereof to resident, employee or officer of the center, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Fifty Dollars ($50.00), nor more than Two Hundred Dollars ($200.00), imprisonment for not less than six (6) months, or both.

HISTORY:
Codes, 1942, § 6900-08; Laws, 1968, ch. 438, § 8; Laws, 2010, ch. 476, § 27, eff from and after passage (approved Apr. 1, 2010).

Editor's Notes —
Section 41-19-11 referred to in this section was repealed by Laws of 1984, ch. 477, § 25, eff from and after July, 1 1984.

Cross References —
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 41-19-17. Designation of North Mississippi Regional Center as state agency for carrying out federal acts pertaining to intellectual disabilities.

The North Mississippi Regional Center is designated as a state agency for carrying out the purposes of any act of the Congress of the United States of America, now existing or at any time hereafter enacted, pertaining to intellectual disabilities.

HISTORY:
Codes, 1942, § 6900-09; Laws, 1968, ch. 438, § 9; Laws, 1992, ch. 336, § 4; Laws, 2010, ch. 476, § 28, eff from and after passage (approved Apr. 1, 2010).

FACILITIES AND SERVICES FOR INDIVIDUALS WITH MENTAL RETARDATION OR MENTAL ILLNESS

Sec.
41-19-31. Board of supervisors may select regional districts.
41-19-33. Regional commissions; establishment; duties and authority.
41-19-35. Appointment, term, and compensation of regional commission members.
41-19-37. Location of facilities or services in regions.
41-19-38. Mental health facilities subject to local zoning ordinances or regulations.
41-19-39. Financial support for facilities or services for individuals with mental illness or intellectual disability; tax levy.

Sec.
41-19-41. Commitment of patients to regional mental health or intellectual disability centers.
41-19-43. Expenses of chancery clerk and sheriff.

§ 41-19-31. Board of supervisors may select regional districts.

For the purpose of authorizing the establishment of mental illness and intellectual disability facilities and services in the State of Mississippi, the boards of supervisors of one or more counties are authorized to act singularly or as a group in the selection of a regional district by spreading upon their minutes by resolution such designation.

HISTORY:

Codes, 1942, § 6909-57; Laws, 1966, ch. 477, § 1; Laws, 2010, ch. 476, § 29, eff from and after passage (approved Apr. 1, 2010).

Cross References —

Reimbursement under the Medicaid law for mental health services provided by a center established under §§ 41-19-31 through 41-19-39, see § 43-13-117.

Establishment of regional commissions by regions designated or established under this section, see § 41-19-33.

Availability of financial assistance for care provided in an approved regional mental health/retardation center, see § 43-13-117.

§ 41-19-33. Regional commissions; establishment; duties and authority.

(1) Each region so designated or established under Section 41-19-31 shall establish a regional commission to be composed of members appointed by the boards of supervisors of the various counties in the region. It shall be the duty of such regional commission to administer mental health/intellectual disability programs certified and required by the State Board of Mental Health and as specified in Section 41-4-1(2). In addition, once designated and established as provided hereinabove, a regional commission shall have the following authority and shall pursue and promote the following general purposes:

(a) To establish, own, lease, acquire, construct, build, operate and maintain mental illness, mental health, intellectual disability, alcoholism and general rehabilitative facilities and services designed to serve the needs of the people of the region so designated, provided that the services supplied by the regional commissions shall include those services determined by the Department of Mental Health to be necessary and may include, in addition to the above, services for persons with developmental and learning disabilities; for persons suffering from narcotic addiction and problems of drug abuse and drug dependence; and for the aging as designated and certified by the Department of Mental Health. Such regional mental health and intellectual disability commissions and other community service providers shall, on or before July 1 of each year, submit an annual operational plan to the Department of Mental Health for approval or disapproval based on the minimum standards and minimum required services established by the department for certification and itemize the services as specified in Section 41-4-1(2). As part of the annual operation plan required by Section 41-4-7(h) submitted by any regional community mental health center or by any other reasonable certification deemed acceptable by the department, the community mental health center shall state those services specified in Section 41-4-1(2) that it will provide and also those services that it will not provide. If the department finds deficiencies in the plan of any regional commission or community service provider based on the minimum standards and minimum required services established for certification, the department shall give the regional commission or community service provider a six-month probationary period to bring its standards and services up to the established minimum standards and minimum required services. After the six-month probationary period, if the department determines that the regional commission or community service provider still does not meet the minimum standards and minimum required services established for certification, the department may remove the certification of the commission or provider, and from and after July 1, 2011, the commission or provider shall be ineligible for state funds from Medicaid reimbursement or other funding sources for those services. After the six-month probationary period, the Department of Mental Health may identify an appropriate community service provider to provide any core services in that county that are not provided by a community mental health center. However, the department shall not offer reimbursement or other accommodations to a community service provider of core services that were not offered to the decertified community mental health center for the same or similar services.

(b) To provide facilities and services for the prevention of mental illness, mental disorders, developmental and learning disabilities, alcoholism, narcotic addiction, drug abuse, drug dependence and other related handicaps or problems (including the problems of the aging) among the people of the region so designated, and for the rehabilitation of persons suffering from such illnesses, disorders, handicaps or problems as designated and certified by the Department of Mental Health.

(c) To promote increased understanding of the problems of mental illness, intellectual disabilities, alcoholism, developmental and learning disabilities, narcotic addiction, drug abuse and drug dependence and other related problems (including the problems of the aging) by the people of the region, and also to promote increased understanding of the purposes and methods of the rehabilitation of persons suffering from such illnesses, disorders, handicaps or problems as designated and certified by the Department of Mental Health.

(d) To enter into contracts and to make such other arrangements as may be necessary, from time to time, with the United States government, the government of the State of Mississippi and such other agencies or governmental bodies as may be approved by and acceptable to the regional commission for the purpose of establishing, funding, constructing, operating and maintaining facilities and services for the care, treatment and rehabilitation of persons suffering from mental illness, an intellectual disability, alcoholism, developmental and learning disabilities, narcotic addiction, drug abuse, drug dependence and other illnesses, disorders, handicaps and problems (including the problems of the aging) as designated and certified by the Department of Mental Health.

(e) To enter into contracts and make such other arrangements as may be necessary with any and all private businesses, corporations, partnerships, proprietorships or other private agencies, whether organized for profit or otherwise, as may be approved by and acceptable to the regional commission for the purpose of establishing, funding, constructing, operating and maintaining facilities and services for the care, treatment and rehabilitation of persons suffering from mental illness, an intellectual disability, alcoholism, developmental and learning disabilities, narcotic addiction, drug abuse, drug dependence and other illnesses, disorders, handicaps and problems (including the problems of the aging) relating to minimum services established by the Department of Mental Health.

(f) To promote the general mental health of the people of the region.

(g) To pay the administrative costs of the operation of the regional commissions, including per diem for the members of the commission and its employees, attorney's fees, if and when such are required in the opinion of the commission, and such other expenses of the commission as may be necessary. The Department of Mental Health standards and audit rules shall determine what administrative cost figures shall consist of for the purposes of this paragraph. Each regional commission shall submit a cost report annually to the Department of Mental Health in accordance with guidelines promulgated by the department.

(h) To employ and compensate any personnel that may be necessary to effectively carry out the programs and services established under the provisions of the aforesaid act, provided such person meets the standards established by the Department of Mental Health.

(i) To acquire whatever hazard, casualty or workers' compensation insurance that may be necessary for any property, real or personal, owned, leased or rented by the commissions, or any employees or personnel hired by the commissions.

(j) To acquire professional liability insurance on all employees as may be deemed necessary and proper by the commission, and to pay, out of the funds of the commission, all premiums due and payable on account thereof.

(k) To provide and finance within their own facilities, or through agreements or contracts with other local, state or federal agencies or institutions, nonprofit corporations, or political subdivisions or representatives thereof, programs and services for persons with mental illness, including treatment for alcoholics, and promulgating and administering of programs to combat drug abuse and programs for services for persons with an intellectual disability.

(*l*) To borrow money from private lending institutions in order to promote any of the foregoing purposes. A commission may pledge collateral, including real estate, to secure the repayment of money borrowed under the authority of this paragraph. Any such borrowing undertaken by a commission shall be on terms and conditions that are prudent in the sound judgment of the members of the commission, and the interest on any such loan shall not exceed the amount specified in Section 75-17-105. Any money borrowed, debts incurred or other obligations undertaken by a commission, regardless of whether borrowed, incurred or undertaken before or after March 15, 1995, shall be valid, binding and enforceable if it or they are borrowed, incurred or undertaken for any purpose specified in this section and otherwise conform to the requirements of this paragraph.

(m) To acquire, own and dispose of real and personal property. Any real and personal property paid for with state and/or county appropriated funds must have the written approval of the Department of Mental Health and/or the county board of supervisors, depending on the original source of funding, before being disposed of under this paragraph.

(n) To enter into managed care contracts and make such other arrangements as may be deemed necessary or appropriate by the regional commission in order to participate in any managed care program. Any such contract or arrangement affecting more than one (1) region must have prior written approval of the Department of Mental Health before being initiated and annually thereafter.

(o) To provide facilities and services on a discounted or capitated basis. Any such action when affecting more than one (1) region must have prior written approval of the Department of Mental Health before being initiated and annually thereafter.

(p) To enter into contracts, agreements or other arrangements with any person, payor, provider or other entity, under which the regional commission assumes financial risk for the provision or delivery of any services, when deemed to be necessary or appropriate by the regional commission. Any action under this paragraph affecting more than one (1) region must have prior written approval of the Department of Mental Health before being initiated and annually thereafter.

(q) To provide direct or indirect funding, grants, financial support and assistance for any health maintenance organization, preferred provider organization or other managed care entity or contractor, where such organization, entity or contractor is operated on a nonprofit basis. Any action under this paragraph affecting more than one (1) region must have prior written approval of the Department of Mental Health before being initiated and annually thereafter.

(r) To form, establish, operate, and/or be a member of or participant in, either individually or with one or more other regional commissions, any managed care entity as defined in Section 83-41-403(c). Any action under this paragraph affecting more than one (1) region must have prior written approval of the Department of Mental Health before being initiated and annually thereafter.

(s) To meet at least annually with the board of supervisors of each county in its region for the purpose of presenting its total annual budget and total mental health/intellectual disability services system. The commission shall submit an annual report on the adult mental health services, children mental health services and intellectual disability services required by the State Board of Mental Health.

(t) To provide alternative living arrangements for persons with serious mental illness, including, but not limited to, group homes for persons with chronic mental illness.

(u) To make purchases and enter into contracts for purchasing in compliance with the public purchasing law, Sections 31-7-12 and 31-7-13, with compliance with the public purchasing law subject to audit by the State Department of Audit.

(v) To insure that all available funds are used for the benefit of persons with mental illness, persons with an intellectual disability, substance abusers and persons with developmental disabilities with maximum efficiency and minimum administrative cost. At any time a regional commission, and/or other related organization whatever it may be, accumulates surplus funds in excess of one-half (½) of its annual operating budget, the entity must submit a plan to the Department of Mental Health stating the capital improvements or other projects that require such surplus accumulation. If the required plan is not submitted within forty-five (45) days of the end of the applicable fiscal year, the Department of Mental Health shall withhold all state appropriated funds from such regional commission until such time as the capital improvement plan is submitted. If the submitted capital improvement plan is not accepted by the department, the surplus funds shall be expended by the regional commission in the local mental health region on group homes for persons with mental illness, persons with an intellectual disability, substance abusers, children or other mental health/intellectual disability services approved by the Department of Mental Health.

(w) Notwithstanding any other provision of law, to fingerprint and perform a criminal history record check on every employee or volunteer. Every employee or volunteer shall provide a valid current social security number and/or driver's license number that will be furnished to conduct the criminal history record check. If no disqualifying record is identified at the state level, fingerprints shall be forwarded to the Federal Bureau of Investigation for a national criminal history record check.

(x) Notwithstanding any other provisions of law, each regional commission shall have the authority to create and operate a primary care health clinic to treat (i) its patients; and (ii) its patients' family members related within the third degree; and (iii) its patients' household members or caregivers, subject to the following requirements:

(i) The regional commission may employ and compensate any personnel necessary and must satisfy applicable state and federal laws and regulations regarding the administration and operation of a primary care health clinic.

(ii) A Mississippi licensed physician must be employed or under agreement with the regional commission to provide medical direction and/or to carry out the physician responsibilities as described under applicable state and/or federal law and regulations.

(iii) The physician providing medical direction for the primary care clinic shall not be certified solely in psychiatry.

(iv) A sliding fee scale may be used by the regional commission when no other payer source is identified.

(v) The regional commission must ensure services will be available and accessible promptly and in a manner that preserves human dignity and assures continuity of care.

(vi) The regional commission must provide a semiannual report to the Chairmen of the Public Health Committees in both the House of Representatives and Senate. At a minimum, for each reporting period, these reports shall describe the number of patients provided primary care services, the types of services provided, and the payer source for the patients. Except for patient information and any other information that may be exempt from disclosure under the Health Information Portability and Accountability Act (HIPAA) and the Mississippi Public Records Act, the reports shall be considered public records.

(vii) The regional commission must employ or contract with a core clinical staff that is multidisciplinary and culturally and linguistically competent.

(viii) The regional commission must ensure that its physician as described in subparagraph (ii) of this paragraph (x) has admitting privileges at one or more local hospitals or has an agreement with a physician who has admitting privileges at one or more local hospitals to ensure continuity of care.

(ix) The regional commission must provide an independent financial audit report to the State Department of Mental Health and, except for patient information and any other information that may be exempt from disclosure under HIPAA and the Mississippi Public Records Act, the audit report shall be considered a public record.

For the purposes of this paragraph (x), the term “caregiver” means an individual who has the principal and primary responsibility for caring for a child or dependent adult, especially in the home setting.

(y) In general to take any action which will promote, either directly or indirectly, any and all of the foregoing purposes.

(2) The types of services established by the State Department of Mental Health that must be provided by the regional mental health/intellectual disability centers for certification by the department, and the minimum levels and standards for those services established by the department, shall be provided by the regional mental health/intellectual disability centers to children when such services are appropriate for children, in the determination of the department.

HISTORY:

Codes, 1942, § 6909-58; Laws, 1966, ch. 477, § 2; Laws, 1973, ch. 384, § 1; Laws, 1984, ch. 495, § 16; reenacted and amended, Laws, 1985, ch. 474, § 25; Laws, 1986, ch. 438, § 25; Laws, 1987, ch. 483, § 26; Laws, 1988, ch. 442, § 23; Laws, 1989, ch. 537, § 22; Laws, 1990, ch. 518, § 23; Laws, 1991, ch. 618, § 22; Laws, 1992, ch. 491 § 23; Laws, 1995, ch. 410, § 1; Laws, 1996, ch. 342, § 1; Laws, 1996, ch. 463, § 1; Laws, 1997, ch. 587, § 3, eff July 1, 1997; Laws, 2003, ch. 415, § 1; Laws, 2010, ch. 476, § 30; Laws, 2011, ch. 501, § 5; Laws, 2014, ch. 459, § 1, eff from and after July 1, 2014.

Joint Legislative Committee Note —
Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected several errors in this section by, in (a), substituting a comma for a semicolon following "the people of the region so designated" in the first sentence and preceding "and from and after July 1, 2011" in the fourth sentence, and in (*l*), by substituting "March 15, 1995" for "the effective date of this act." The Joint Committee ratified the correction at its July 24, 2014, meeting.

Editor's Notes —
Laws of 1997, ch. 587, § 1, provides as follows:

"SECTION 1. This act shall be known and may be cited as the Mississippi Mental Health Reform Act of 1997."

Laws of 2011, ch. 501, § 1, effective July 1, 2011, provides:

"SECTION 1. This act shall be known and may be cited as the 'Rose Isabel Williams Mental Health Reform Act of 2011.'"

Cross References —
Immunity of state and political subdivisions from liability and suit for torts and torts of its employees, see §§ 11-46-1 et seq.

Participation in a comprehensive plan of one or more policies of liability insurance procured and administered by the Department of Finance and Administration, see § 11-46-17.

Mississippi Public Records Act, see § 25-61-1 et seq.

Reimbursement under the Medicaid law for mental health services provided by a center established under §§ 41-19-31 through 41-19-39, see § 43-13-117.

Federal Aspects—
Federal Health Insurance Portability and Accountability Act of 1996, see 42 USCS §§ 1320d et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Lease.

1. In general.
Despite its state agency status, a regional mental health commission was required to adhere to the municipal zoning ordinances of the city when selecting a regional mental health facility site. City of Hattiesburg v. Region XII Comm'n on Mental Health & Retardation, 654 So. 2d 516, 1995 Miss. LEXIS 224 (Miss. 1995).

A regional mental health-mental retardation commission's purchase of liability insurance did not waive the commission's sovereign immunity. Region VII, Mental Health-Mental Retardation Center v. Isaac, 523 So. 2d 1013, 1988 Miss. LEXIS 195 (Miss. 1988).

2. Lease.
This statute does not show a clear legislative intent to abrogate the common-law rule against binding successors; therefore, a ninety-nine-year lease agreement was voidable as a matter of law because it bound successor commissions in the exercise of their discretionary authority. A mental retardation commission had the statutory authority to acquire, own and dispose of real and personal property under this statute; although the commission had the duty to administer mental health/intellectual disability programs, how the commission decided to administer the programs was discretionary. Northeast Mental Health - Mental Retardation Comm'n v. Cleveland, 187 So. 3d 601, 2016 Miss. LEXIS 126 (Miss. 2016).

OPINIONS OF THE ATTORNEY GENERAL

A regional mental health commission may use incentive programs for its employees, so long as such programs are not based on past services. 1992 Miss. Op. Att'y Gen. 435.

Authority for mental illness and retardation facilities to enter into contracts for implementation or operation of programs is at Miss. Code Section 41-19-33(e). 1993 Miss. Op. Att'y Gen. 148.

Financing arrangements for mental illness and retardation facilities, if necessary, are authorized by Miss. Code Section 41-19-33(k). 1993 Miss. Op. Att'y Gen. 148.

State law does not empower Regional Mental Health Commission created pursuant to Miss. Code Section 41-19-33 to form private corporation. 1993 Miss. Op. Att'y Gen. 148.

Member of Regional Mental Health Commission presently serving is not prohibited from serving at same time as member of State Board of Mental Health, so long as he does not receive from Regional Mental Health Commission any compensation, including salary, per diem or expenses from funds allocated to it by State Board of Mental Health. 1993 Miss. Op. Att'y Gen. 815.

Section 41-19-33 allows regional mental health commissions to borrow money for any authorized purpose of the commission. There is no statutory requirement that the Commission publish notice to obtain bids for financing for the construction of an addition to an existing facility. 1995 Miss. Op. Att'y Gen. 158.

The Region VI Mental Health-Mental Retardation Commission under its broad grant of authority may, but is not required to, provide such benefits as health insurance to its employees and pay the premiums therefore in whole or in part as it deems proper. 1998 Miss. Op. Att'y Gen. 522.

Simultaneous service on a local school board, the Ethics Commission and a Regional Mental Health Commission is not a violation of Miss. Const., Art. I, § 2. 2004 Miss. Op. Att'y Gen. 12.

A regional commission would not be authorized to make pharmacy services available to an employee who is not a client. Smith, Oct. 27, 2006, A.G. Op. 06-0531, 2006 Miss. AG LEXIS 397; modified as to authority of regional commission to offer pharmacy services to persons other than persons who are clients of the regional commission by 2007 Miss. Op. Att'y Gen. 47, 2007 Miss. AG LEXIS 21.

A county central vehicle repair department may provide repair and maintenance services to a regional mental health center pursuant to an interlocal agreement. 2006 Miss. Op. Att'y Gen. 594.

The Northeast Mental Health-Mental Retardation Commission, Region III, is authorized to provide pharmacy services to its clients as well as to its employees as a fringe benefit, but not to the general public, as long as such services are authorized by the Mississippi State Board of Pharmacy. 2007 Miss. Op. Att'y Gen. 47, 2007 Miss. AG LEXIS 21 (modifying Smith, A.G. Op. #06-00531, 2006 Miss. AG LEXIS 397).

§ 41-19-35. Appointment, term, and compensation of regional commission members.

The board of supervisors of each participating county in the program shall appoint one (1) member to represent its county on the regional commission in its respective region for a term of four (4) years. Any compensation of such members shall be paid by the regional commission, in its discretion, from any funds available.

HISTORY:

Codes, 1942, § 6909-59; Laws, 1966, ch. 477, § 3, eff from and after passage (approved June 16, 1966).

Cross References —

Reimbursement under the Medicaid law for mental health services provided by a center established under §§ 41-19-31 through 41-19-39, see § 43-13-117.

§ 41-19-37. Location of facilities or services in regions.

The location of any mental illness and intellectual disability facilities or services in any of the regions shall be determined by the regional commission. However, such location and such services shall not conflict with the state plan for services or facilities developed by the Department of Mental Health.

HISTORY:

Codes, 1942, § 6909-60; Laws, 1966, ch. 477, § 4; Laws, 1974, ch. 567, § 12; Laws, 2010, ch. 476, § 31, eff from and after passage (approved Apr. 1, 2010).

Cross References —

Reimbursement under the Medicaid law for mental health services provided by a center established under §§ 41-19-31 through 41-19-39, see § 43-13-117.

JUDICIAL DECISIONS

1. In general.

Despite its state agency status, a regional mental health commission was required to adhere to the municipal zoning ordinances of the city when selecting a regional mental health facility site. City of Hattiesburg v. Region XII Comm'n on Mental Health & Retardation, 654 So. 2d 516, 1995 Miss. LEXIS 224 (Miss. 1995).

§ 41-19-38. Mental health facilities subject to local zoning ordinances or regulations.

Any regional mental health or intellectual disability commission established according to the provisions of Section 41-19-31 et seq. shall not construct or operate any facility in an area in violation of any local zoning ordinances or regulations.

HISTORY:

Laws, 1995, ch. 528, § 16; Laws, 2010, ch. 476, § 32, eff from and after passage (approved Apr. 1, 2010).

§ 41-19-39. Financial support for facilities or services for individuals with mental illness or intellectual disability; tax levy.

After a plan for mental illness and intellectual disability facilities or services has been submitted by any regional commission and approved by the Department of Mental Health, the regional commission may request the boards of supervisors of the various counties in the region to levy a special tax for the construction, operation and maintenance of those mental illness and intellectual disability facilities or services in such region. The boards of supervisors of the counties desiring to participate in the program in each region are authorized to use any available funds and, if necessary, to levy a special tax, not to exceed two (2) mills, for the construction, operation and maintenance of the mental illness and intellectual disability facilities or services provided for and authorized in Sections 41-19-31 through 41-19-39.

The governing authority of any municipality in the region may, upon resolution spread upon its minutes, make a voluntary contribution for the construction, operation or maintenance of the mental illness and intellectual disability facilities in the region in which the municipality lies.

In addition to the purposes for which the county tax levies and municipal contributions may be used as authorized under this section, the county tax levies and municipal contributions may also be used for repayment of any loans from private lending institutions made by the commission under the authority of Section 41-19-33(*l*).

HISTORY:

Codes, 1942, § 6909-61; Laws, 1966, ch. 477, § 4; Laws, 1972, ch. 307, § 1; Laws, 1974, ch. 567, § 13; Laws, 1995, ch. 410, § 2; Laws, 2010, ch. 476, § 33, eff from and after passage (approved Apr. 1, 2010).

Cross References —

Local ad valorem tax levies, generally, see §§ 27-39-301 et seq.

Reimbursement under the Medicaid law for mental health services provided by a center established under §§ 41-19-31 through 41-19-39, see § 43-13-117.

Availability of financial assistance for care provided in an approved regional mental health/retardation center, see § 43-13-117.

OPINIONS OF THE ATTORNEY GENERAL

Since the regional mental health commission was selected by boards of supervisors of various counties in region and members were appointed by such boards, commission may invest any surplus funds as directed by Section 19-9-29. 1992 Miss. Op. Att'y Gen. 672.

Section 41-19-39 is sufficiently broad to allow county to contribute real estate, as well as funds, to mental health commission which county supports. 1994 Miss. Op. Att'y Gen. 1023.

§ 41-19-41. Commitment of patients to regional mental health or intellectual disability centers.

Any regional mental health or intellectual disability facility or service established and operated according to the provisions set forth in Sections 41-19-31 through 41-19-39, is eligible to admit and treat patients committed by either the chancellors or chancery clerks in the same manner as is provided by the laws of Mississippi for commitment to the state mental institutions.

HISTORY:

Codes, 1942, § 6909-71; Laws, 1968, ch. 439, § 1; Laws, 2010, ch. 476, § 34, eff from and after passage (approved Apr. 1, 2010).

Cross References —

Procedures for and individual's procedural and substantive rights during the initial involuntary commitment hearing and thereafter, see §§ 41-21-61 et seq.

Definition of persons with mental illness or an intellectual disability, see § 41-21-61.

Proceedings for commitment to state mental institutions, see §§ 41-21-61 et seq.

Length of initial involuntary commitment of persons with mental illness or an intellectual disability, see § 41-21-73.

Prohibition against involuntary commitment of persons whose primary problems are physical disabilities associated with old age or infant birth defects, see § 41-21-73.

Voluntary admission of persons with mental illness or an intellectual disability of particular age or marital status, see § 41-21-103.

Criminal sanctions for unlawfully conspiring to commit an individual to a treatment facility, see §§ 41-21-107 and 97-3-13.

RESEARCH REFERENCES

Law Reviews.

Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue – Rules 16, 81 and 82. 52 Miss. L. J. 105, March 1982.

§ 41-19-43. Expenses of chancery clerk and sheriff.

Whenever it is necessary to commit and transport any eligible patient to a regional mental health or intellectual disability facility for treatment or care, the chancery clerk and sheriff shall be entitled to expenses as provided for by the laws of Mississippi for commitment and transportation to state mental institutions.

HISTORY:

Codes, 1942, § 6909-72; Laws, 1968, ch. 439, § 2; Laws, 2010, ch. 476, § 35, eff from and after passage (approved Apr. 1, 2010).

INTERAGENCY COMMISSION ON MENTAL ILLNESS AND MENTAL RETARDATION [REPEALED]

Sec.
41-19-61 through 41-19-69. Repealed.

§§ 41-19-61 through 41-19-69. Repealed.

Repealed by Laws, 1974, ch. 567, § 15, eff from and after passage (approved April 23, 1974).

[Laws, 1966, ch. 476, §§ 1-5]

Editor's Notes —

Former § 41-19-61 created and set out the membership of the Mississippi Interagency Commission on Mental Illness and Mental Retardation.

Former § 41-19-63 dealt with the compensation of members of the interagency commission, the election of officers, and the commission's accounting system.

Former § 41-19-65 detailed the purposes and functions of the interagency commission.

Former § 41-19-67 dealt with the scope of authority of the interagency commission.

Former § 41-19-69 authorized the interagency commission to employ an executive director and staff, to receive federal funds and grants, develop projects, enter into contracts, and expend funds.

The authority, personnel and property of the abolished Mississippi Interagency Commission on Mental Illness and Mental Retardation were transferred to the state board of mental health. See § 41-4-11. Section 16 of the repealing act provided, in part, that "all powers, duties and responsibilities transferred by this act shall remain under the authority and control of existing state agencies until July 1, 1974."

COORDINATION OF SERVICES TO MENTALLY ILL AND MENTALLY RETARDED [REPEALED]

Sec.
41-19-81. Repealed.

§ 41-19-81. Repealed.

Repealed by Laws, 1974, ch. 567, § 15, eff from and after passage (approved April 23, 1974).

[Laws, 1962, ch. 417, §§ 1, 2]

Editor's Notes —

Former § 41-19-81 empowered the board of trustees of mental institutions to coordinate services to the mentally ill and mentally retarded, ordered the cooperation of other state departments and agencies, and set out the purpose and intent of the section.

The authority, personnel and property of the abolished board of trustees of mental institutions were transferred to the state board of mental health. See § 41-4-11. Section 16 of the repealing act provided, in part, that "all powers, duties and responsibilities transferred by this act shall remain under the authority and control of existing state agencies until July 1, 1974."

CONTRIBUTIONS BY CERTAIN LOCAL GOVERNMENTS TO NONPROFIT CORPORATIONS ASSISTING CHILDREN WITH MENTAL RETARDATION

Sec.
41-19-91. Certain counties and municipalities may contribute to nonprofit corporations operating programs for children with an intellectual disability.

§ 41-19-91. Certain counties and municipalities may contribute to nonprofit corporations operating programs for children with an intellectual disability.

(1) Any board of supervisors, mayor and board of selectmen of any city in which Mississippi State Highway No. 50 and United States Highway No. 45 Alternate intersect, are authorized and empowered, in their discretion, to contribute a sum not to exceed Ten Thousand Dollars ($10,000.00) each to a nonprofit corporation, the purpose of which is to develop and operate programs for children with an intellectual disability. The contribution may be made from the general fund of such county and/or city wherein funds may be available.

(2) To acquire the funds in which to make such contribution, the board of supervisors of such county and/or mayor and board of selectmen of such city are authorized and empowered, in its discretion, to set aside, appropriate and expend monies from the general fund.

HISTORY:

Laws, 1973, ch. 454, §§ 1-3; Laws, 1986, ch. 400, § 23; Laws, 2010, ch. 476, § 36, eff from and after passage (approved Apr. 1, 2010).

Cross References —

Local ad valorem tax levies generally, see §§ 27-39-301 et seq.

ELLISVILLE STATE SCHOOL

Sec.
41-19-101. Repealed.
41-19-103. Establishment of the Ellisville State School.
41-19-105 and 41-19-107. Repealed.
41-19-108. Construction and equipping of certain Ellisville State School buildings and facilities.
41-19-109. Repealed.
41-19-111. Repealed.
41-19-112. Administration by State Board of Mental Health.
41-19-113. Repealed.
41-19-114. Assessment of support and maintenance costs.
41-19-115. Repealed.
41-19-116. Criminal offenses and penalties.
41-19-117. Repealed.
41-19-118. Designation of Ellisville State School as state agency for carrying out purposes of Congressional acts pertaining to intellectual disabilities.
41-19-119. Repealed.
41-19-121. Board for director.

§ 41-19-101. Repealed.

Repealed by Laws, 1984, ch. 477, § 26, eff from and after July 1, 1984.

[Codes, Hemingway's 1921 Supp. § 5728b; 1930, § 7269; 1942, § 6764; Laws, 1920, ch. 210; Laws, 1984, ch. 472, § 3]

Editor's Notes —

Former § 41-19-101 defined "feeble-minded" and "poor person".

§ 41-19-103. Establishment of the Ellisville State School.

The Ellisville State School established by Chapter 210, Laws of Mississippi 1920, is recognized as now existing and shall hereafter be known under the name of Ellisville State School for the care and treatment of persons with an intellectual disability. The school shall have the power to receive and hold property, real, personal and mixed, as a body corporate. The school shall be under the direction and control of the State Board of Mental Health.

HISTORY:

Codes, Hemingway's 1921 Supp. § 5728c; 1930, § 7270; 1942, § 6765; Laws, 1920, ch. 210; Laws, 1930, ch. 30; Laws, 2008, ch. 442, § 43; Laws, 2010, ch. 476, § 37, eff from and after passage (approved Apr. 1, 2010).

Editor's Notes —

Laws of 1992, ch. 324, § 1, eff from and after passage (approved April 20, 1992), provides as follows:

"SECTION 1. Ellisville State School, a State Department of Mental Health facility, is authorized and empowered to purchase, for a price of Fourteen Thousand Four Hundred Six Dollars ($14,406.00), from First South Production Credit Association, thirty-two and one-half (32-1/2) acres of land, more or less, lying south of Interstate 59 in the W/2 of the NW/4 of Section 18, Township 7 North, Range 12 West, First Judicial District, Jones County, Mississippi. The purchase shall be made from funds currently appropriated to Ellisville State School for the fiscal year 1991-1992."

Laws of 2011, ch. 447, § 3, provides:

"SECTION 3. Ellisville State School, by and through the State Board of Mental Health, shall convey without compensation to the Mississippi Transportation Commission all of its right, title and interest in certain real property hereinafter labeled as Warranty, such conveyance being located in Jones County, Mississippi, described more specifically as follows:

" **WARRANTY**

"INDEXING INSTRUCTIONS: SE ¼ of the SW ¼; NW ¼ of the SE ¼; NE ¼ of the SE ¼; SE ¼ of the NE ¼ of Section 8, Township 7 North, Range 12 West. AND

"SW ¼ of the NW ¼ of Section 9, Township 7 North, Range 12 West, First Judicial District, Jones County, Mississippi.

"AND

"SW ¼ of the NW ¼ of Section 9, Township 7 North, Range 12 West, First Judicial District, Jones County, Mississippi.

"AND

"NE ¼ of the SE ¼; SE ¼ of the NE ¼ of Section 8 and SW ¼ of the NW ¼ of Section 9, all in Township 7 North, Range 12 West, First Judicial District, Jones County, Mississippi.

" **Exhibit 'A'**

"COMMENCE AT THE NW CORNER OF THE NW ¼ OF SECTION 9, TOWNSHIP 7 NORTH, RANGE 12 WEST, FIRST JUDICIAL DISTRICT, JONES COUNTY, MISSISSIPPI; THENCE RUN SOUTH A DISTANCE OF 1,701.15 FEET; THENCE RUN EAST A DISTANCE OF 457.64 FEET TO THE POINT OF BEGINNING OF THE LAND TO BE DESCRIBED; FROM SAID POINT OF BEGINNING, RUN NORTH 06° 50'15" EAST A DISTANCE OF 243.08 FEET; THENCE RUN SOUTH 85° 51' 04" EAST A DISTANCE OF 20.92 FEET; THENCE RUN SOUTH 44° 29' 44" EAST A DISTANCE OF 113.45 FEET; THENCE RUN SOUTH 39° 08'16" WEST A DISTANCE OF 204.88 FEET BACK TO THE POINT OF BEGINNING, CONTAINING 0.3235 ACRES, AND BEING A PART OF THE SW ¼ OF THE NW ¼ OF SECTION 9, TOWNSHIP 7 NORTH, RANGE 12 WEST, FIRST JUDICIAL DISTRICT, JONES COUNTY, MISSISSIPPI. BEARINGS NOTED IN THIS DESCRIPTION ARE REFERENCED TO MISSISSIPPI STATE PLANE EAST ZONE GRID NORTH.

" **Exhibit 'B'**

"COMMENCE AT THE SE CORNER OF THE SE ¼ OF SECTION 8, TOWNSHIP 7 NORTH, RANGE 12 WEST, FIRST JUDICIAL DISTRICT, JONES COUNTY, MISSISSIPPI; THENCE RUN NORTH A DISTANCE OF 2,231.51 FEET; THENCE RUN WEST A DIS-

TANCE OF 813.18 FEET TO THE POINT OF BEGINNING OF THE LAND TO BE DESCRIBED; FROM SAID POINT OF BEGINNING, RUN NORTH 60° 54' 31″ EAST A DISTANCE OF 334.25 FEET; THENCE RUN NORTH 29° 05' 29″ WEST A DISTANCE OF 10.00 FEET; THENCE RUN SOUTH 60° 54' 31″ WEST A DISTANCE OF 334.25 FEET; THENCE RUN SOUTH 29° 05' 29″ EAST A DISTANCE OF 10.00 FEET BACK TO THE POINT OF BEGINNING, CONTAINING 0.0767 ACRES, AND BEING A PART OF THE NE ¼ OF THE SE ¼ OF SECTION 8, TOWNSHIP 7 NORTH, RANGE 12 WEST, FIRST JUDICIAL DISTRICT, JONES COUNTY, MISSISSIPPI. BEARINGS NOTED IN THIS DESCRIPTION ARE REFERENCED TO MISSISSIPPI STATE PLANE EAST ZONE GRID NORTH.

“ **Exhibit ‘C’**

“COMMENCE AT THE SE CORNER OF THE SE ¼ OF SECTION 8, TOWNSHIP 7 NORTH, RANGE 12 WEST, FIRST JUDICIAL DISTRICT, JONES COUNTY, MISSISSIPPI; THENCE RUN NORTH A DISTANCE OF 1,986.50 FEET; THENCE RUN WEST A DISTANCE OF 1,191.83 FEET TO THE POINT OF BEGINNING OF THE LAND TO BE DESCRIBED; FROM SAID POINT OF BEGINNING, RUN SOUTH 60° 54' 31″ WEST A DISTANCE OF 150.00 FEET; THENCE RUN SOUTH 29° 05' 29″ EAST A DISTANCE OF 10.00 FEET; THENCE RUN SOUTH 60° 54' 31″ WEST A DISTANCE OF 300.00 FEET; THENCE RUN NORTH 29° 05' 29″ WEST A DISTANCE OF 25.00 FEET; THENCE RUN SOUTH 60° 54' 31″ WEST A DISTANCE OF 600.00 FEET; THENCE RUN NORTH 29° 05' 29″ WEST A DISTANCE OF 25.00 FEET; THENCE RUN NORTH 60° 54' 31″ EAST A DISTANCE OF 1,050.00 FEET; THENCE RUN SOUTH 29° 05' 29″ EAST A DISTANCE OF 40.00 FEET BACK TO THE POINT OF BEGINNING, CONTAINING 0.8264 ACRES, AND BEING A PART OF THE NW ¼ OF THE SE ¼ AND THE NE ¼ OF THE SE ¼ OF SECTION 8, TOWNSHIP 7 NORTH, RANGE 12 WEST, FIRST JUDICIAL DISTRICT, JONES COUNTY, MISSISSIPPI. BEARINGS NOTED IN THIS DESCRIPTION ARE REFERENCED TO MISSISSIPPI STATE PLANE EAST ZONE GRID NORTH.

“ **Exhibit ‘D’**

“COMMENCE AT THE SE CORNER OF THE SE ¼ OF SECTION 8, TOWNSHIP 7 NORTH, RANGE 12 WEST, FIRST JUDICIAL DISTRICT, JONES COUNTY, MISSISSIPPI; THENCE RUN NORTH A DISTANCE OF 2,014.03 FEET; THENCE RUN WEST A DISTANCE OF 1,430.30 FEET TO THE POINT OF BEGINNING OF THE LAND TO BE DESCRIBED; FROM SAID POINT OF BEGINNING, RUN SOUTH 60° 54' 31″ WEST A DISTANCE OF 780.00 FEET; THENCE RUN NORTH 29° 05' 29″ WEST A DISTANCE OF 25.00 FEET; THENCE RUN NORTH 60° 54' 31″ EAST A DISTANCE OF 175.00 FEET; THENCE RUN NORTH 29° 05' 29″ WEST A DISTANCE OF 15.00 FEET; THENCE RUN NORTH 60° 54' 31″ EAST A DISTANCE OF 140.00 FEET; THENCE RUN NORTH 29° 05' 29″ WEST A DISTANCE OF 20.00 FEET; THENCE RUN NORTH 60° 54' 31″ EAST A DISTANCE OF 110.00 FEET; THENCE RUN SOUTH 29° 05' 29″ EAST A DISTANCE OF 35.00 FEET; THENCE RUN NORTH 60° 54' 31″ EAST A DISTANCE OF 355.00 FEET; THENCE RUN SOUTH 29° 05' 29″ EAST A DISTANCE OF 25.00 FEET BACK TO THE POINT OF BEGINNING, CONTAINING 0.5843 ACRES, AND BEING A PART OF THE NW ¼ OF THE SE ¼ OF SECTION 8, TOWNSHIP 7 NORTH, RANGE 12 WEST, FIRST JUDICIAL DISTRICT, JONES COUNTY, MISSISSIPPI. BEARINGS NOTED IN THIS DESCRIPTION ARE REFERENCED TO MISSISSIPPI STATE PLANE EAST ZONE GRID NORTH.

“ **Exhibit ‘E’**

“COMMENCE AT THE SW CORNER OF THE SW ¼ OF SECTION 8, TOWNSHIP 7 NORTH, RANGE 12 WEST, FIRST JUDICIAL DISTRICT, JONES COUNTY, MISSISSIPPI; THENCE RUN EAST A DISTANCE OF 1,992.97 FEET; THENCE RUN NORTH A DISTANCE OF 796.35 FEET TO THE POINT OF BEGINNING OF THE LAND TO BE DESCRIBED; FROM SAID POINT OF BEGINNING, RUN NORTH 81° 10' 40″ EAST A DISTANCE OF 277.83 FEET; THENCE RUN SOUTH 15° 55'13″ EAST A DISTANCE OF 62.67 FEET; THENCE RUN NORTH 67° 17'28″ EAST A DISTANCE OF 80.56 FEET; THENCE RUN NORTH 15° 55'13″ WEST A DISTANCE OF 83.66 FEET; THENCE RUN NORTH 3505'56‘ EAST A DISTANCE OF 265.13 FEET; THENCE RUN SOUTH 60° 54' 31″ WEST A DISTANCE OF 103.38 FEET; THENCE RUN WESTERLY ALONG A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 3,784.73 FEET, A CHORD BEARING OF SOUTH 57° 15'34″ WEST, AND A CHORD DISTANCE OF 481.76 FEET, A DISTANCE OF 482.09 FEET BACK TO THE POINT OF BEGINNING, CONTAINING 1.0454 ACRES, AND BEING A PART OF THE SE ¼ OF THE SW ¼ OF SECTION 8, TOWNSHIP 7 NORTH, RANGE 12 WEST, FIRST JUDICIAL DISTRICT, JONES COUNTY, MISSISSIPPI. BEARINGS NOTED IN THIS DESCRIPTION ARE REFERENCED TO MISSISSIPPI STATE PLANE EAST ZONE GRID NORTH.

" Exhibit 'F'

"COMMENCE AT THE SE CORNER OF THE SE ¼ OF SECTION 8, TOWNSHIP 7 NORTH, RANGE 12 WEST, FIRST JUDICIAL DISTRICT, JONES COUNTY, MISSISSIPPI; THENCE RUN WEST A DISTANCE OF 431.96 FEET; THENCE RUN NORTH A DISTANCE OF 2,581.65 FEET TO THE POINT OF BEGINNING OF THE LAND TO BE DESCRIBED; FROM SAID POINT OF BEGINNING, RUN NORTH 36° 11' 13″ WEST A DISTANCE OF 75.00 FEET; THENCE RUN EASTERLY ALONG A CURVE THAT ARCS TO THE LEFT, SAID CURVE HAVING A RADIUS OF 1,311.61 FEET, A CHORD BEARING OF NORTH 50° 31'22″ EAST, AND A CHORD DISTANCE OF 150.56 FEET, A DISTANCE OF 150.64 FEET; THENCE RUN SOUTH 42° 46' 03″ EAST A DISTANCE OF 75.00 FEET; THENCE RUN WESTERLY ALONG A CURVE THAT ARCS TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 1,386.61 FEET, A CHORD BEARING OF SOUTH 50° 31' 22″ WEST, AND A CHORD DISTANCE OF 159.17 FEET, A DISTANCE OF 159.26 FEET BACK TO THE POINT OF BEGINNING, CONTAINING 0.2668 ACRES, AND BEING A PART OF THE NE ¼ OF THE SE ¼ AND THE SE ¼ OF THE NE ¼ OF SECTION 8, TOWNSHIP 7 NORTH, RANGE 12 WEST, FIRST JUDICIAL DISTRICT, JONES COUNTY, MISSISSIPPI. BEARINGS NOTED IN THIS DESCRIPTION ARE REFERENCED TO MISSISSIPPI STATE PLANE EAST ZONE GRID NORTH.

" Exhibit 'G'

"COMMENCE AT THE NW CORNER OF THE NW ¼ OF SECTION 9, TOWNSHIP 7 NORTH, RANGE 12 WEST, FIRST JUDICIAL DISTRICT, JONES COUNTY, MISSISSIPPI; THENCE RUN EAST A DISTANCE OF 103.06 FEET; THENCE RUN SOUTH A DISTANCE OF 2,295.30 FEET TO THE POINT OF BEGINNING OF THE LAND TO BE DESCRIBED; FROM SAID POINT OF BEGINNING, RUN SOUTH 50° 51' 44″ EAST A DISTANCE OF 25.00 FEET; THENCE RUN SOUTH 39° 08' 16″ WEST A DISTANCE OF 75.00 FEET; THENCE RUN NORTH 50° 51' 44″ WEST A DISTANCE OF 25.00 FEET; THENCE RUN NORTH 39° 08' 16″ EAST A DISTANCE OF 75.00 FEET BACK TO THE POINT OF BEGINNING, CONTAINING 0.0430 ACRES, AND BEING A PART OF THE SW ¼ OF THE NW ¼ OF SECTION 9, TOWNSHIP 7 NORTH, RANGE 12 WEST, FIRST JUDICIAL DISTRICT, JONES COUNTY, MISSISSIPPI. BEARINGS NOTED IN THIS DESCRIPTION ARE REFERENCED TO MISSISSIPPI STATE PLANE EAST ZONE GRID NORTH."

Cross References —

Facility being under the jurisdiction and control of the state department of mental health, see § 41-4-11(2).

Definition of persons with mental illness or an intellectual disability, see § 41-21-61.

RESEARCH REFERENCES

ALR.

Application, to drug or narcotic records maintained by druggist or physician, of "required records" exception to privilege against self-incrimination. 96 A.L.R. Fed. 868.

Am. Jur.

40A Am. Jur. 2d, Hospitals and Asylums § 4.

CJS.

41 C.J.S., Hospitals §§ 2, 3, 15–17.

§§ 41-19-105 and 41-19-107. Repealed.

Repealed by Laws, 2008, ch. 442, § 50, effective from and after July 1, 2008.

§ 41-19-105. [Codes, Hemingway's 1921 Supp. § 5728i; 1930, § 7275; 1942, § 6766; Laws, 1920, ch. 210; Laws, 1970, ch. 374, § 4; Laws, 1984, ch. 472, § 4, eff from and after July 1, 1984.]

§ 41-19-107. [Codes, Hemingway's 1921 Supp. § 5728n; 1930, § 7277; 1942, § 6767; Laws, 1920, ch. 210.]

Editor's Notes —

Former § 41-19-105 provided for the plan of Ellisville State School.

Former § 41-19-107 required the director of Ellisville State School to keep certain records.

§ 41-19-108. Construction and equipping of certain Ellisville State School buildings and facilities.

With funds provided by the Legislature, by direct appropriation or authorized bond issue, with federal matching funds, or with any other available funds, the Bureau of Building, Grounds and Real Property Management may construct and equip the necessary residential and service buildings and other facilities to care for the residents of Ellisville State School. The general design of the school and all construction plans shall be approved and recommended by the State Department of Mental Health.

HISTORY:
Laws, 2008, ch. 442, § 44, eff from and after July 1, 2008.

§ 41-19-109. Repealed.

Repealed by Laws, 2008, ch. 442, § 50, effective from and after July 1, 2008.

§ 41-19-109. [Codes, Hemingway's 1921 Supp. § 5728o; 1930, § 7278; 1942, § 6768; Laws, 1920, ch. 210.]

Editor's Notes —
Former § 41-19-109 authorized the director of Ellisville State School to sell certain agricultural and manufactured products.

§ 41-19-111. Repealed.

Repealed by Laws, 1984, ch. 477, § 26, eff from and after July 1, 1984.

§ 41-19-111. [Codes, Hemingway's 1921 Supp. § 5728p; 1930, § 7279; 1942, § 6769; Laws, 1920, ch. 210]

Editor's Notes —
Former § 41-19-111 pertained to the commitment, care and custody of a child who was feeble-minded.

§ 41-19-112. Administration by State Board of Mental Health.

Ellisville State School shall be administered by the State Board of Mental Health. Provisions relating to the admission and care of residents at the school shall be promulgated by the board.

HISTORY:
Laws, 2008, ch. 442, § 45, eff from and after July 1, 2008.

§ 41-19-113. Repealed.

Repealed by Laws, 1984, ch. 477, § 26, eff from and after July 1, 1984.

§ 41-19-113. [Codes, Hemingway's 1921 Supp. § 5728y; 1930, § 7288; 1942, § 6778; Laws, 1920, ch. 210]

Editor's Notes —
Former § 41-19-113 pertained to the transfer of feeble-minded and insane patients.

§ 41-19-114. Assessment of support and maintenance costs.

Persons admitted to Ellisville State School shall be assessed support and maintenance costs in accordance with the provisions of the state reimbursement laws as they apply to other state institutions.

HISTORY:

Laws, 2008, ch. 442, § 46, eff from and after July 1, 2008.

Cross References —

Provisions for the reimbursement of state institutions for hospitalization and treatment, see §§ 41-7-71 et seq.

For comparable provisions with respect to North Mississippi Regional Center, South Mississippi Regional Center, Boswell Regional Center, and Hudspeth Regional Center, see §§ 41-19-13, 41-19-153, 41-19-209 and 41-19-241, respectively.

§ 41-19-115. Repealed.

Repealed by Laws, 2008, ch. 442, § 50, effective from and after July 1, 2008.

§ 41-19-115. [Codes, Hemingway's 1921 Supp. § 5728z; 1930, § 7289; 1942, § 6779; Laws, 1920, ch. 210.]

Editor's Notes —

Former § 41-19-115 provided discharge procedures for Ellisville patients.

§ 41-19-116. Criminal offenses and penalties.

Any person who (a) knowingly and unlawfully or improperly causes a person to be adjudged to be a person with an intellectual disability, (b) procures the escape of a legally committed resident or knowingly conceals an escaped legally committed resident of Ellisville State School, or (c) unlawfully brings any firearm, deadly weapon or explosive into the school or its grounds, or passes any thereof to a resident, employee or officer of the school, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Fifty Dollars ($50.00), nor more than Two Hundred Dollars ($200.00), imprisonment for not less than six (6) months, or both.

HISTORY:

Laws, 2008, ch. 442, § 47; Laws, 2010, ch. 476, § 38, eff from and after passage (approved Apr. 1, 2010).

Cross References —

For comparable provisions with respect to North Mississippi Regional Center and South Mississippi Regional Center, Boswell Regional Center, and Hudspeth Regional Center, see §§ 41-19-15, 41-19-155, 41-19-211 and 41-19-243, respectively.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 41-19-117. Repealed.

Repealed by Laws, 2008, ch. 442, § 50, effective from and after July 1, 2008.

§ 41-19-117. [Codes, Hemingway's 1921 Supp. § 5728a1; 1930, § 7290; 1942, § 6780; Laws, 1920, ch. 210.]

Editor's Notes —
Former § 41-19-117 provided for habeas corpus proceedings for Ellisville patients.

§ 41-19-118. Designation of Ellisville State School as state agency for carrying out purposes of Congressional acts pertaining to intellectual disabilities.

Ellisville State School is designated as a state agency for carrying out the purposes of any act of the Congress of the United States, now existing or at any time hereafter enacted, pertaining to intellectual disabilities.

HISTORY:
Laws, 2008, ch. 442, § 48; Laws, 2010, ch. 476, § 39, eff from and after passage (approved Apr. 1, 2010).

§ 41-19-119. Repealed.

Repealed by Laws, 2008, ch. 442, § 50, effective from and after July 1, 2008.

§ 41-19-119. [Codes, Hemingway's 1921 Supp. § 5728d1; 1930, § 7293; 1942, § 6783; Laws, 1920, ch. 210.]

Editor's Notes —
Former § 41-19-119 authorized the board of trustees to accept gifts for the support of Ellisville State School.

§ 41-19-121. Board for director.

The director of Ellisville State School may receive free lodging in his institution for himself and his family, but not free board, nor free supplies from the school.

HISTORY:
Codes, 1930, § 7294; 1942, § 6784; Laws, 1928, chs. 66, 68; Laws, 2008, ch. 442, § 49, eff from and after July 1, 2008.

Cross References —
Heads of institutions being selected by state board of mental health upon recommendation of the executive director, see § 41-4-11.

SOUTH MISSISSIPPI REGIONAL CENTER

Sec.
41-19-141. Declaration of purpose.
41-19-143. Location of center.
41-19-145. Construction and equipping of center.
41-19-147. Management and operation of center.
41-19-149 and 41-19-151. Repealed.
41-19-153. Reimbursement.
41-19-155. Penalties.
41-19-157. Designation of South Mississippi Regional Center as state agency for carrying out federal acts pertaining to intellectual disabilities.

§ 41-19-141. Declaration of purpose.

The purpose of Sections 41-19-141 through 41-19-157 is to create, construct, equip and maintain a center to be located in South Mississippi for the care and treatment of persons with an intellectual disability, which shall be known as the South Mississippi Regional Center.

HISTORY:

Laws, 1974, ch. 417, § 1; Laws, 1992, ch. 336, § 5; Laws, 2010, ch. 476, § 40, eff from and after passage (approved Apr. 1, 2010).

Editor's Notes —

Within sections 41-19-141 through 41-19-157, referred to in the section, were repealed by Laws, 1984, ch. 477, § 27, effective from and after July 1, 1984.

Cross References —

Voluntary admissions of persons with mental illness or an intellectual disability, see § 41-21-103.

RESEARCH REFERENCES

ALR.

Validity, construction, application, and effect of Civil Rights of Institutionalized Persons Act, 42 USCS §§ 1997-1997j. 93 A.L.R. Fed. 706.

Am. Jur.

40A Am. Jur. 2d, Hospitals and Asylums § 4.

CJS.

41 C.J.S., Hospitals §§ 2, 3, 15–17.

§ 41-19-143. Location of center.

The center shall be located on a site selected by the Board of Trustees of Mental Institutions and approved by the Mississippi State Building Commission. The center, however, shall be located as near as possible to an urban area or institution having adequate medical and hospital facilities and shall embrace sufficient land for such agricultural activities as the board may deem necessary for the operation of the institution.

Out of funds provided therefor by the Legislature or from any sources, the state building commission is hereby authorized to purchase or acquire the necessary land for the location of the center, or it may also acquire the land by gift, deed, transfer, or other legitimate means, or the center may be located on land belonging to the state or one of its political subdivisions; however, any such land selected shall be transferred or deeded to the State of Mississippi for the sole use of the Board of Trustees of Mental Institutions in carrying out the provisions of Sections 41-19-141 through 41-19-157.

HISTORY:

Laws, 1974, ch. 417, § 2; Laws, 1992, ch. 336, § 6, eff from and after July 1, 1992.

Editor's Notes —

The board of trustees of mental institutions, referred to in this section, was abolished as of July 1, 1974 and its functions transferred to the state board of mental health and the state department of mental health, by Laws of 1974, ch. 567, § 6, effective from and after April 23, 1974. See § 41-4-11.

Section 31-11-1 provides that wherever the term "state building commission" or "building commission" appears in the laws of the state of Mississippi, it shall be construed to mean the governor's office of general services. Section 7-1-451, however, provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross References —

State building commission, see §§ 31-11-1 et seq.

Creation of state board of mental health to act in lieu of abolished board of trustees of mental institutions, see §§ 41-4-1 et seq.

Facility being under jurisdiction and control of state department of mental health, see § 41-4-11(2).

§ 41-19-145. Construction and equipping of center.

With funds provided by the legislature, by direct appropriation or authorized bond issue, with federal matching funds, or any other available funds, the Mississippi State Building Commission is hereby authorized to construct and equip the necessary residential and service buildings and other facilities to care for approximately five hundred (500) residents. The general design of the center and all construction plans shall be approved and recommended by the board of trustees of mental institutions.

HISTORY:

Laws, 1974, ch. 417, § 3, eff from and after passage (approved March 26, 1974).

Editor's Notes —

The board of trustees of mental institutions, referred to in this section, was abolished as of July 1, 1974 and its functions transferred to the state board of mental health and the state department of mental health, by Laws of 1974, ch. 567, § 6, effective from and after April 23, 1974. See § 41-4-11.

Section 31-11-1 provides that wherever the term "state building commission" or "building commission" appears in the laws of the state of Mississippi, it shall be construed to mean the governor's office of general services. Section 7-1-451, however, provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross References —

Creation of state board of mental health to act in lieu of abolished board of trustees of mental institutions, see §§ 41-4-1 et seq.

§ 41-19-147. Management and operation of center.

The center shall be administered by the board of trustees of mental institutions, as provided for in Sections 41-5-31 through 41-5-55, inclusive, and all subsequent laws enacted which define the powers and authority of the board. Provisions relating to the admission and care of residents and patients provided for hereinafter shall apply to all institutions for persons with an intellectual disability administered by the board, unless they are in conflict with the provisions of the above-mentioned laws.

HISTORY:

Laws, 1974, ch. 417, § 4; Laws, 2010, ch. 476, § 41, eff from and after passage (approved Apr. 1, 2010).

Editor's Notes —

This section contains a reference to §§ 41-5-31 through 41-5-55. All of these sections, except for §§ 41-5-44 and 41-5-55, were repealed by Laws of 1974, ch. 567, § 15, eff from and after passage (approved April 23, 1974).

Section 41-5-55, referred to in this section, was repealed by Laws of 2008, ch. 442, § 50, effective from and after July 1, 2008.

The board of trustees of mental institutions, referred to in this section, was abolished as of July 1, 1974 and its functions transferred to the state board of mental health and the state department of mental health, by Laws of 1974, ch. 567, § 6, effective from and after April 23, 1974. See § 41-4-11.

Cross References —

Creation of state board of mental health to act in lieu of abolished board of trustees of mental institutions, see §§ 41-4-1 et seq.

Facility being under the jurisdiction and control of the state department of mental health, see § 41-4-11(2).

Proceedings for commitment to state mental institutions, see §§ 41-21-61 et seq.

Definition of persons with mental illness or an intellectual disability, see § 41-21-61.

Voluntary admissions of persons with mental illness or an intellectual disability, see § 41-21-103.

RESEARCH REFERENCES

Am. Jur.

40A Am. Jur. 2d, Hospitals and Asylums §§ 6 et seq.

CJS.

41 C.J.S., Hospitals §§ 2, 3, 15–17.

§§ 41-19-149 and 41-19-151. Repealed.

Repealed by Laws, 1984, ch. 477, § 27, eff from and after July 1, 1984.

§ 41-19-149. [Laws, 1974, ch. 417, § 5]

§ 41-19-151. [Laws, 1974, ch. 417, § 6]

Editor's Notes —

Former § 41-19-149 specified the eligibility for admission.

Former § 41-19-151 specified admission procedures.

§ 41-19-153. Reimbursement.

Persons admitted to the center shall be assessed support and maintenance costs in accordance with the provisions of the state reimbursement laws as they apply to other state institutions.

HISTORY:

Laws, 1974, ch. 417, § 7; Laws, 1992, ch. 336, § 7, eff from and after July 1, 1992.

Cross References —

For comparable provisions with respect to North Mississippi Regional Center, Ellisville State School, Boswell Regional Center, and Hudspeth Regional Center, see §§ 41-19-13, 41-19-114, 41-19-209 and 41-19-241, respectively.

§ 41-19-155. Penalties.

Any person who: (1) under the provisions of Sections 41-19-141 through 41-19-157 knowingly and unlawfully or improperly causes a person to be adjudged to be a person with an intellectual disability; (2) procures the escape of a legally committed resident or knowingly conceals an escaped legally committed resident of the center; or (3) unlawfully brings any firearm, deadly weapon or explosive into the center or its grounds or passes any thereof to a resident, employee or officer of the center is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than Two Hundred Dollars ($200.00), imprisonment for not more than one (1) year, or both.

HISTORY:

Laws, 1974, ch. 417, § 8; Laws, 2010, ch. 476, § 42, eff from and after passage (approved Apr. 1, 2010).

Editor's Notes —

Former §§ 41-19-149 and 41-19-151, referred to in this section, were repealed by Laws of 1984, ch. 477, § 27, effective from and after July 1, 1984.

Cross References —

Criminal sanctions for unlawfully conspiring to commit an individual to a mental treatment facility, see § 41-21-107.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 41-19-157. Designation of South Mississippi Regional Center as state agency for carrying out federal acts pertaining to intellectual disabilities.

The South Mississippi Regional Center is designated as a state agency for carrying out the purposes of any act of the Congress of the United States of America now existing or at any time hereafter enacted pertaining to intellectual disabilities.

HISTORY:
Laws, 1974, ch. 417, § 9; Laws, 1992, ch. 336, § 8; Laws, 2010, ch. 476, § 43, eff from and after passage (approved Apr. 1, 2010).

BOSWELL REGIONAL CENTER

Sec.
41-19-201. Declaration of purpose.
41-19-203. Location, construction, equipping and administration of center.
41-19-205. Eligibility for admission.
41-19-207. Admission procedures.
41-19-209. Reimbursement.
41-19-211. Penalties.
41-19-213. Designation of Boswell Regional Center as state agency for carrying out federal acts pertaining to intellectual disabilities.

§ 41-19-201. Declaration of purpose.

The purpose of Sections 41-19-201 through 41-19-213 is to create, construct, equip and maintain a center located in Central Mississippi for the care and treatment of persons with an intellectual disability, which shall be known as the Boswell Regional Center. Sections 41-19-201 through 41-19-213 shall not supersede Section 41-5-44, but shall be supplemental to that section.

HISTORY:
Laws, 1982, ch. 360, § 1(1); Laws, 1992, ch. 336, § 9; Laws, 2010, ch. 476, § 44, eff from and after passage (approved Apr. 1, 2010).

Cross References —
For comparable provisions with respect to North Mississippi Regional Center, South Mississippi Regional Center and Hudspeth Regional Center, see §§ 41-19-1, 41-19-141 and 41-19-231, respectively.

RESEARCH REFERENCES

ALR.
Validity, construction, application, and effect of Civil Rights of Institutionalized Persons Act, 42 USCS §§ 1997-1997j. 93 A.L.R. Fed. 706.

Am. Jur.
40A Am. Jur. 2d, Hospitals and Asylums § 4.

CJS.
41 C.J.S., Hospitals §§ 2, 3, 15–17.

§ 41-19-203. Location, construction, equipping and administration of center.

The center shall be located on the site of the Tuberculosis Sanatorium of Mississippi.

With funds provided by the Legislature, by direct appropriation or authorized bond issue, with federal matching funds, or with any other available funds, the state building commission is authorized to construct and equip the necessary residential and service buildings and other facilities for the care and treatment of persons with an intellectual disability. The general design of the center and all construction plans shall be approved and recommended by the State Board of Mental Health.

The center shall be administered by the State Board of Mental Health.

HISTORY:

Laws, 1982, ch. 360, § 1 (2)-(4); Laws, 1992, ch. 336, § 10; Laws, 2010, ch. 476, § 45, eff from and after passage (approved Apr. 1, 2010).

Editor's Notes —

Section 31-11-1 provides that wherever the term "state building commission" or "building commission" appears in the laws of the state of Mississippi, it shall be construed to mean the governor's office of general services. Section 7-1-451, however, provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross References —

State board of mental health, see §§ 41-4-3 et seq.

Facility being under jurisdiction and control of state department of mental health, see § 41-4-11(2).

For comparable provisions with respect to North Mississippi Regional Center, Ellisville State School, South Mississippi Regional Center and Hudspeth Regional Center, see §§ 41-19-3 through 41-19-7, 41-19-108 and 41-19-112, §§ 41-19-143 through 41-19-147 and §§ 41-19-233 and 41-19-235, respectively.

RESEARCH REFERENCES

Am. Jur.

40A Am. Jur. 2d, Hospitals and Asylums §§ 6 et seq.

CJS.

41 C.J.S., Hospitals §§ 2, 3, 15–17.

§ 41-19-205. Eligibility for admission.

A person may be deemed eligible for admission to the center if:

(a) His parents or guardian or person in loco parentis has resided in the state not less than one (1) year prior to the date of admission; and

(b) He is at least five (5) years of age and has such an intellectual disability that he is incapable of managing himself or his affairs, or he has an intellectual disability to the extent that special care, training and education provided at the center will enable him to better function in society; or

(c) He is committed to the center by the chancery court in the manner hereinafter provided; or

(d) He is under five (5) years of age and is approved for admission by the board of mental health, upon the recommendation of the director, because of having an exceptional handicap.

HISTORY:

Laws, 1982, ch. 360, § 2; Laws, 1990, ch. 370, § 1; Laws, 1992, ch. 336, § 11; Laws, 2010, ch. 476, § 46, eff from and after passage (approved Apr. 1, 2010).

RESEARCH REFERENCES

Am. Jur.
40A Am. Jur. 2d, Hospitals and Asylums § 13.

CJS.
41 C.J.S., Hospitals § 4, 18–21.

§ 41-19-207. Admission procedures.

Admission of an eligible person to the center shall be as follows:

(a) The parents or guardian or person in loco parentis of any person thought to have an intellectual disability may file an application for admission to the center. Such application shall be made on an official form approved or furnished by the center. Within ten (10) days after the admission of the person to the center, the director shall have him examined by a qualified physician or psychologist or both. If he is found not to have an intellectual disability, the parents, guardian or person in loco parentis shall be required to take him from the center. The results of the examination shall be entered upon the person's record if he is found to have an intellectual disability and eligible to remain at the center.

(b) If any person with an intellectual disability is afflicted to the extent that he needs care, supervision or control, or to the extent that he is likely to become dangerous or a menace if left at large, any relative or any citizen of the State of Mississippi may make affidavit of such fact and shall file such affidavit with the clerk of the chancery court of the county of such person's residence or with the clerk of the chancery court of any county in which such person might be found. When such affidavit is received by the chancery clerk, he shall follow the same procedure for commitment to the center as is provided for in state law for the commitment of persons to the state mental hospitals.

(c) Persons with an intellectual disability may be admitted to the center by the director for a time sufficient for diagnosis, evaluation and training without formal commitment, provided such person is referred by another state agency or department. In such cases the person so admitted shall be subject to all regulations governing the center for such time as he remains.

(d) The final determination of admission to the center shall be the decision of the director of the center.

HISTORY:
Laws, 1982, ch. 360, § 3; Laws, 1990, ch. 370, § 2; Laws, 1992, ch. 336, § 12; Laws, 2010, ch. 476, § 47, eff from and after passage (approved Apr. 1, 2010).

Cross References —
Proceedings for commitment to state mental institutions, see §§ 41-21-61 et seq.

RESEARCH REFERENCES

Am. Jur.
40A Am. Jur. 2d, Hospitals and Asylums § 13.

CJS.
41 C.J.S., Hospitals § 4, 18–21.

§ 41-19-209. Reimbursement.

Persons admitted to the center shall be assessed support and maintenance costs in accordance with the provisions of the state reimbursement laws as they apply to other state institutions.

HISTORY:

Laws, 1982, ch. 360, § 4; Laws, 1992, ch. 336, § 13, eff from and after July 1, 1992.

Cross References —

Provisions for the reimbursement of state institutions for hospitalization and treatment, see §§ 41-7-71 et seq.

For comparable provisions with respect to North Mississippi Regional Center, Ellisville State School, South Mississippi Regional Center and Hudspeth Regional Center, see §§ 41-19-13, 41-19-114, 41-19-153 and 41-19-241, respectively.

§ 41-19-211. Penalties.

Any person who (a) under the provisions of Section 41-19-207, knowingly and unlawfully or improperly causes a person to be adjudged to be a person with an intellectual disability, (b) procures the escape of a legally committed resident or knowingly conceals an escaped legally committed resident of the center, or (c) unlawfully brings any firearm, deadly weapon or explosive into the center or its grounds, or passes any thereof to a resident, employee or officer of the center, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Fifty Dollars ($50.00) nor more than Two Hundred Dollars ($200.00), imprisonment for not less than six (6) months nor more than one (1) year, or both.

HISTORY:

Laws, 1982, ch. 360, § 5; Laws, 2010, ch. 476, § 48, eff from and after passage (approved Apr. 1, 2010).

Cross References —

For comparable provisions with respect to North Mississippi Regional Center, Ellisville State School, South Mississippi Regional Center and Hudspeth Regional Center, see §§ 41-19-15, 41-19-116, 41-19-155, and 41-19-243, respectively.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 41-19-213. Designation of Boswell Regional Center as state agency for carrying out federal acts pertaining to intellectual disabilities.

The Boswell Regional Center is designated as a state agency for carrying out the purposes of any act of the Congress of the United States of America now existing or at any time hereafter enacted pertaining to intellectual disabilities.

HISTORY:

Laws, 1982, ch. 360, § 6; Laws, 1992, ch. 336, § 14; Laws, 2010, ch. 476, § 49, eff from and after passage (approved Apr. 1, 2010).

Cross References —

For comparable provisions with respect to North Mississippi Regional Center, Ellisville State School, South Mississippi Regional Center and Hudspeth Regional Center, see §§ 41-19-17, 41-19-118, 41-19-157, and 41-19-245, respectively.

HUDSPETH REGIONAL CENTER

Sec.	
41-19-231.	Purpose of Sections 41-19-231 through 41-19-245.
41-19-233.	Site of center.
41-19-235.	Department of finance and administration to construct and equip necessary facilities; State board of mental health to administer center.
41-19-237.	Eligibility for admission to center.
41-19-239.	Admission procedures.
41-19-241.	Patient support and maintenance costs.
41-19-243.	Criminal offenses.
41-19-245.	Center designated state agency.

§ 41-19-231. Purpose of Sections 41-19-231 through 41-19-245.

The purpose of Sections 41-19-231 through 41-19-245 is to create, construct, equip and maintain a center located in Central Mississippi for the care and treatment of persons with an intellectual disability, which shall be known as the Hudspeth Regional Center.

HISTORY:
Laws, 1990, ch. 475, § 1; Laws, 1992, ch. 336, § 15; Laws, 2010, ch. 476, § 50, eff from and after passage (approved Apr. 1, 2010).

RESEARCH REFERENCES

Am. Jur.
53 Am. Jur. 2d, Mentally Impaired Persons §§ 1, 2 et seq.
9B Am. Jur. Legal Forms 2d, Incompetent Persons, §§ 141:1 et seq.
14 Am. Jur. Pl & Pr Forms, (Rev), Incompetent Persons, Forms 1 et seq. (initiation of proceedings to determine competency).
26 Am. Jur. Trials 97, Representing the Mentally Ill: Civil Commitment Proceedings.

§ 41-19-233. Site of center.

The center shall be located on the site of the Mississippi State Hospital previously known as the Whitfield Annex.

HISTORY:
Laws, 1990, ch. 475, § 2; Laws, 1992, ch. 336, § 16, eff from and after July 1, 1992.

§ 41-19-235. Department of finance and administration to construct and equip necessary facilities; State board of mental health to administer center.

With funds provided by the Legislature, by direct appropriation or authorized bond issue, with federal matching funds, or with any other available funds, the Department of Finance and Administration is authorized to construct and equip the necessary residential and service buildings and other facilities for the care and treatment of persons with an intellectual disability. The general design of the center and all construction plans shall be approved and recommended by the State Board of Mental Health.

The center shall be administered by the State Board of Mental Health.

HISTORY:
Laws, 1990, ch. 475, § 3; Laws, 2010, ch. 476, § 51, eff from and after passage (approved Apr. 1, 2010).

Cross References —
State Board of Mental Health, see § 41-4-3.

§ 41-19-237. Eligibility for admission to center.

A person may be deemed eligible for admission to the center if:

(a) His parents or guardian or person in loco parentis has resided in the state not less than one (1) year before the date of admission; and

(b) He is at least five (5) years of age and has such an intellectual disability that he is incapable of managing himself or his affairs, or he has an intellectual disability to the extent that special care, training and education provided at the center will enable him to better function in society; or

(c) He is committed to the center by the chancery court in the manner hereinafter provided; or

(d) He is under five (5) years of age and is approved for admission by the Board of Mental Health, upon the recommendation of the director, because of having an exceptional handicap.

HISTORY:
Laws, 1990, ch. 475, § 4; Laws, 1992, ch. 336, § 17; Laws, 2010, ch. 476, § 52, eff from and after passage (approved Apr. 1, 2010).

Cross References —
Procedures for admission to center, see § 41-19-239.

Penalty for unlawfully or improperly causing person to be adjudged a person with an intellectual disability, see § 41-19-243.

RESEARCH REFERENCES

Am. Jur.
53 Am. Jur. 2d, Mentally Impaired Persons §§ 1, 2 et seq.

§ 41-19-239. Admission procedures.

Admission of eligible persons to the center shall be as follows:

(a) The parents or guardian or person in loco parentis of any person thought to have an intellectual disability may file an application for admission to the center. Such application shall be made on an official form approved or furnished by the center. Within ten (10) days after the admission of the person to the center, the director shall have him examined by a qualified physician or psychologist or both. If he is found not to have an intellectual disability, the parents, guardian or person in loco parentis shall be required to take him from the center. The results of the examination shall be entered upon the person's record if he is found to have an intellectual disability and eligible to remain at the center.

(b) If any person with an intellectual disability is afflicted to the extent that he needs care, supervision or control, or to the extent that he is likely to become dangerous or a menace if left at large, any relative or any citizen of the State of Mississippi may make affidavit of such fact and shall file such affidavit with the clerk of the chancery court of the county of such person's residence or with the clerk of the chancery court of any county in which such person might be found. When such affidavit is received by the chancery clerk, he shall follow the same procedure for commitment to the center as is provided for in state law for the commitment of persons to the state mental hospitals.

(c) Persons with an intellectual disability may be admitted to the center by the director for a time sufficient for diagnosis, evaluation and training without formal commitment, provided such person is referred by another state agency or department. In such cases the person so admitted shall be subject to all regulations governing the center for such time as he remains.

(d) The final determination of admission to the center shall be the decision of the director of the center.

HISTORY:

Laws, 1990, ch. 475, § 5; Laws, 1992, ch. 336, § 18; Laws, 2010, ch. 476, § 53, eff from and after passage (approved Apr. 1, 2010).

Cross References —

Eligibility for admission to center, see § 41-19-237.

Commitment proceedings, see § 41-21-61 et seq.

Patients' rights, see § 41-21-102.

RESEARCH REFERENCES

ALR.

Modern status of rules as to standard of proof required in civil commitment proceedings. 97 A.L.R.3d 780.

Am. Jur.

53 Am. Jur. 2d, Mentally Impaired Persons §§ 4 et seq.

9B Am. Jur. Legal Forms 2d, Incompetent Persons, §§ 141:9-141:12.

14 Am. Jur. Pl & Pr Forms, (Rev), Incompetent Persons, Forms 1-28 (initiation of proceedings to determine competency status); Forms 61-76 (examination and hearing to determine competency status).

26 Am. Jur. Trials 97, Representing the Mentally Ill: Civil Commitment Proceedings.

§ 41-19-241. Patient support and maintenance costs.

Persons admitted to the center shall be assessed support and maintenance costs in accordance with the provisions of the state reimbursement laws as they apply to other state institutions.

HISTORY:

Laws, 1990, ch. 475, § 6; Laws, 1992, ch. 336, § 19, eff from and after July 1, 1992.

Cross References —

For comparable provisions with respect to North Mississippi Regional Center, Ellisville State School, South Mississippi Regional Center and Hudspeth Regional Center, see §§ 41-19-13, 41-19-114, 41-19-153, and 41-19-209, respectively.

Payment of costs of commitment proceedings and institutionalization, see § 41-21-79.

RESEARCH REFERENCES

Am. Jur.
53 Am. Jur. 2d, Mentally Impaired Persons §§ 120 et seq.
14 Am. Jur. Pl & Pr Forms, (Rev), Incompetent Persons, Forms 181-214 (costs of incompetency proceedings and expenses of support and treatment of incompetent).

§ 41-19-243. Criminal offenses.

Any person who (a) under the provisions of Section 41-19-237, knowingly and unlawfully or improperly causes a person to be adjudged to be a person with an intellectual disability, (b) procures the escape of a legally committed resident or knowingly conceals an escaped legally committed resident of the center, or (c) unlawfully brings any firearm, deadly weapon or explosive into the center or its grounds, or passes any thereof to a resident, employee or officer of the center, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Fifty Dollars ($50.00) nor more than Two Hundred Dollars ($200.00), imprisonment for not less than six (6) months nor more than one (1) year, or both.

HISTORY:
Laws, 1990, ch. 475, § 7; Laws, 2010, ch. 476, § 54, eff from and after passage (approved Apr. 1, 2010).

Cross References —
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR.
Right to relief under Federal Civil Rights Act of 1871 (42 USCS § 1983) for alleged wrongful commitment to or confinement in mental hospital. 16 A.L.R. Fed. 440.

§ 41-19-245. Center designated state agency.

The Hudspeth Regional Center is designated as a state agency for carrying out the purposes of any act of the Congress of the United States of America now existing or at any time hereafter enacted pertaining to intellectual disabilities.

HISTORY:
Laws, 1990, ch. 475, § 8; Laws, 1992, ch. 336, § 20; Laws, 2010, ch. 476, § 55, eff from and after passage (approved Apr. 1, 2010).

NORTH MISSISSIPPI STATE HOSPITAL AND SOUTH MISSISSIPPI STATE HOSPITAL

Sec.
41-19-251. North Mississippi State Hospital and South Mississippi State Hospital.
41-19-253. Location sites selected by State Board of Mental Health.
41-19-255. Administration by State Board of Mental Health.
41-19-257. Eligibility criteria for admission to the facilities.
41-19-259. Support and maintenance costs.
41-19-261. Criminal penalties for certain actions in connection with the facilities or their patients.

Sec.
41-19-263. North Mississippi State Hospital and South Mississippi State Hospital designated as state agencies.

§ 41-19-251. North Mississippi State Hospital and South Mississippi State Hospital.

The purpose of Sections 41-19-251 et seq. is to create, construct, equip, and maintain two (2) facilities for the acute care treatment of persons with mental illness who have been committed by the chancery court pursuant to Section 41-21-61 et seq., which shall be known as the North Mississippi State Hospital and South Mississippi State Hospital. The South Mississippi State Hospital shall not be constructed or established until such time as sufficient funds have been appropriated or otherwise made available for that purpose by the Legislature.

HISTORY:
Laws, 1995, ch. 545, § 1, eff from and after July 1, 1995.

§ 41-19-253. Location sites selected by State Board of Mental Health.

The facilities shall be located on sites selected by the State Board of Mental Health and approved by the Mississippi Department of Finance and Administration. One (1) facility shall be located in the northern half of the state near an urban area or institution having adequate medical and hospital facilities, and one (1) facility shall be located in the southern half of the state near an urban area or institution having adequate medical and hospital facilities.

HISTORY:
Laws, 1995, ch. 545, § 2, eff from and after July 1, 1995.

§ 41-19-255. Administration by State Board of Mental Health.

(1) Out of funds provided therefor by the Legislature or from any other sources, the Department of Finance and Administration is authorized to purchase or acquire the necessary land for the location of the facilities; or the Department of Finance and Administration may acquire the land by gift, deed, transfer or other legitimate means; or the facilities may be located on land belonging to the state or one of its political subdivisions. However, any such land selected shall be transferred or deeded to the State of Mississippi for the sole use of the State Board of Mental Health in carrying out the provisions of Sections 41-19-251 et seq. The general design of the facilities and all construction plans shall be approved and recommended by the State Department of Mental Health.

(2) The facilities shall be administered by the State Board of Mental Health.

HISTORY:
Laws, 1995, ch. 545, § 3, eff from and after July 1, 1995.

§ 41-19-257. Eligibility criteria for admission to the facilities.

Persons who have attained the age of eighteen (18) years, who have been determined to be a mentally ill person as defined in Section 41-21-61 and who have been committed for treatment by the chancery court pursuant to Section 41-21-61 et seq. shall be eligible for acute treatment at the facilities.

HISTORY:
Laws, 1995, ch. 545, § 4, eff from and after July 1, 1995.

§ 41-19-259. Support and maintenance costs.

Persons admitted to the facilities shall be assessed support and maintenance costs in accordance with the provisions of the state reimbursement laws as they apply to other state institutions.

HISTORY:
Laws, 1995, ch. 545, § 5, eff from and after July 1, 1995.

Cross References —
For comparable provisions with respect to North Mississippi Regional Center, Ellisville State School, South Mississippi Regional Center and Hudspeth Regional Center, see §§ 41-19-13, 41-19-114, 41-19-153, and 41-19-209, respectively.

§ 41-19-261. Criminal penalties for certain actions in connection with the facilities or their patients.

Any person who (a) under the provisions of Sections 41-19-251 et seq. knowingly and unlawfully or improperly causes a person to be adjudged mentally ill, (b) procures the escape of a legally committed patient or knowingly conceals an escaped legally committed resident of the facility, or (c) unlawfully brings any firearm, deadly weapon or explosive into the facility or its grounds, or passes any thereof to patient, employee or officer of the facility, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Fifty Dollars ($50.00) nor more than Two Hundred Dollars ($200.00), imprisonment for not less than six (6) months nor more than one (1) year, or both.

HISTORY:
Laws, 1995, ch. 545, § 6, eff from and after July 1, 1995.

Cross References —
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 41-19-263. North Mississippi State Hospital and South Mississippi State Hospital designated as state agencies.

The North Mississippi State Hospital and the South Mississippi State Hospital are designated as state agencies for carrying out the purposes of any act of the Congress of the United States of America existing on July 1, 1995, or enacted at any time after July 1, 1995, that pertains to mental illness.

HISTORY:
Laws, 1995, ch. 545, § 7, eff from and after July 1, 1995.

CENTRAL MISSISSIPPI RESIDENTIAL CENTER

Sec.	
41-19-271.	Central Mississippi Residential Center established; purpose.
41-19-273.	Location and administration.
41-19-275.	Persons served.
41-19-277.	Support and maintenance costs.
41-19-279.	Possessing deadly weapon or explosive on grounds.
41-19-281.	Center as state agency for carrying out purposes of Congressional acts.

§ 41-19-271. Central Mississippi Residential Center established; purpose.

The purpose of Sections 41-19-271 through 41-19-281 is to create, equip, and maintain a residential facility for adults with chronic mental illness which shall be known as the Central Mississippi Residential Center.

HISTORY:
Laws, 1998, ch. 317, § 1, eff from and after July 1, 1998.

Editor's Notes —
Laws of 1998, ch. 317, §§ 1-6 enacted Sections 41-19-261 through 41-19-271. However, since Sections 41-19-261 and 41-19-263 previously existed, the sections enacted by chapter 317 were renumbered as 41-19-271 through 41-19-281 and the language of this section was revised accordingly pursuant to the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

§ 41-19-273. Location and administration.

The center shall be located at the old Clarke College property in the City of Newton, and it shall be administered by the State Board of Mental Health.

HISTORY:
Laws, 1998, ch. 317, § 2, eff from and after July 1, 1998.

Editor's Notes —
Laws of 1998, ch. 317, §§ 1-6 enacted Sections 41-19-261 through 41-19-271. However, since Sections 41-19-261 and 41-19-263 previously existed, the sections enacted by chapter 317 were renumbered as 41-19-271 through 41-19-281 pursuant to the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

§ 41-19-275. Persons served.

The center shall serve persons who have attained the age of twenty-one (21) years with chronic mental illness who would benefit from a structured living environment.

HISTORY:
Laws, 1998, ch. 317, § 3, eff from and after July 1, 1998.

Editor's Notes —
Laws of 1998, ch. 317, §§ 1-6 enacted Sections 41-19-261 through 41-19-271. However,

since Sections 41-19-261 and 41-19-263 previously existed, the sections enacted by chapter 317 were renumbered as 41-19-271 through 41-19-281 pursuant to the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

§ 41-19-277. Support and maintenance costs.

Persons admitted to the center shall be assessed support and maintenance costs in accordance with the provisions of the state reimbursement laws as they apply to other state facilities.

HISTORY:

Laws, 1998, ch. 317, § 4, eff from and after July 1, 1998.

Editor's Notes —

Laws of 1998, ch. 317, §§ 1-6 enacted Sections 41-19-261 through 41-19-271. However, since Sections 41-19-261 and 41-19-263 previously existed, the sections enacted by chapter 317 were renumbered as 41-19-271 through 41-19-281 pursuant to the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

§ 41-19-279. Possessing deadly weapon or explosive on grounds.

Any person who knowingly brings any firearm, deadly weapon or explosive into the center or its grounds, or passes any thereof to a resident, employee or officer of the center, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Fifty Dollars ($50.00) nor more than Two Hundred Dollars ($200.00), imprisonment for not less than six (6) months nor more than one (1) year, or both.

HISTORY:

Laws, 1998, ch. 317, § 5, eff from and after July 1, 1998.

Editor's Notes —

Laws of 1998, ch. 317, §§ 1-6 enacted Sections 41-19-261 through 41-19-271. However, since Sections 41-19-261 and 41-19-263 previously existed, the sections enacted by chapter 317 were renumbered as 41-19-271 through 41-19-281 pursuant to the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

§ 41-19-281. Center as state agency for carrying out purposes of Congressional acts.

The center is designated as a state agency for carrying out the purposes of any act of the Congress of the United States of America existing on July 1, 1998, or enacted at any time after July 1, 1998, that pertains to mental illness.

HISTORY:

Laws, 1998, ch. 317, § 6, eff from and after July 1, 1998.

Editor's Notes —

Laws of 1998, ch. 317, §§ 1-6 enacted Sections 41-19-261 through 41-19-271. However, since Sections 41-19-261 and 41-19-263 previously existed, the sections enacted by chapter 317 were renumbered as 41-19-271 through 41-19-281 pursuant to the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

SPECIALIZED TREATMENT FACILITY IN HARRISON COUNTY

Sec.
41-19-291. Specialized Treatment Facility for the Emotionally Disturbed in Harrison County; admissions; construction; funding.

§ 41-19-291. Specialized Treatment Facility for the Emotionally Disturbed in Harrison County; admissions; construction; funding.

(1) The Specialized Treatment Facility for the Emotionally Disturbed, located in Harrison County, Mississippi, is recognized as now existing and shall be for the care and treatment of persons with mental illness. The facility shall have the power to receive and hold property, real, personal, and mixed, as a body corporate. The facility shall be under the direction and control of the State Board of Mental Health.

(2) Admissions shall be limited to mentally or emotionally disturbed adolescents who have been committed to the facility by a youth court judge or chancellor as provided in Section 41-21-109, or who are voluntarily admitted to the facility.

(3) With funds provided by the Legislature, by direct appropriation or authorized bond issue, with federal matching funds, or with any other available funds, the Bureau of Building, Grounds and Real Property Management may construct and equip the necessary residential and service buildings and other facilities to care for the residents of the Specialized Treatment Facility for the Emotionally Disturbed. The general design of the facility and all construction plans shall be approved and recommended by the State Department of Mental Health.

(4) The Specialized Treatment Facility for the Emotionally Disturbed shall be administered by the State Board of Mental Health. Provisions relating to the admission and care of residents at the facility shall be promulgated by the board.

(5) The Specialized Treatment Facility for the Emotionally Disturbed is authorized to establish and operate a school to meet the educational needs of its patients.

(6) Persons admitted to the Specialized Treatment Facility for the Emotionally Disturbed shall be assessed support and maintenance costs in accordance with the provisions of the state reimbursement laws as they apply to other state institutions.

(7) Any person who (a) knowingly and unlawfully or improperly causes a person to be adjudged mentally ill, (b) procures the escape of a legally committed patient or knowingly conceals an escaped legally committed patient of the facility or (c) unlawfully brings any firearm, deadly weapon or explosive into the facility or its grounds, or passes any thereof to a resident, employee or officer of the school, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Fifty Dollars ($50.00), or more than Two

Hundred Dollars ($200.00), imprisonment for not less than six (6) months, or both.

(8) The Specialized Treatment Facility for the Emotionally Disturbed is designated as a state agency for carrying out the purposes of any act of the Congress of the United States, now existing or at any time hereafter enacted, pertaining to mental illness.

(9) If no funding for the Specialized Treatment Facility for the Emotionally Disturbed is provided by state appropriation, the Department of Mental Health may lease the facility to carry out the purposes of the facility as provided in this section and Section 41-21-109. Before the facility may be leased, the department, in conjunction with the Bureau of Building, Grounds and Real Property Management of the Department of Finance and Administration, shall publicly issue requests for proposals, advertised in the same manner as provided in Section 31-7-13 for seeking competitive sealed bids. The requests for proposals shall contain terms and conditions relating to submission of proposals, evaluation and selection of proposals, financial terms, legal responsibilities, and any other matters as the department and bureau determine to be appropriate for inclusion. Upon receiving responses to the request for proposals, the department and bureau shall select the most qualified proposal or proposals on the basis of experience and qualifications of the proposers, the technical approach, the financial arrangements, the best value and overall benefits to the state, and any other relevant factors determined to be appropriate, and from those proposals, shall negotiate and enter a contract or contracts for the lease of the facility with one or more of the persons or firms submitting proposals. However, if the department and bureau deem none of the proposals to be qualified or otherwise acceptable, the request for proposals process may be reinitiated.

(10) If the Specialized Treatment Facility for the Emotionally Disturbed is leased under subsection (9) of this section, the lessee of the facility must give first priority in hiring employees for the facility to the current employees at the facility. This condition must be included as one (1) of the specifications in the request for proposals for leasing the facility.

HISTORY:

Laws, 2002, ch. 527, § 1; Laws, 2009, ch. 563, § 11, eff from and after passage (approved May 13, 2009).

Cross References —

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violations, see § 99-19-73.

MISSISSIPPI ADOLESCENT CENTER IN BROOKHAVEN

Sec.

41-19-301. Mississippi Adolescent Center for juveniles with an intellectual disability in Brookhaven; admissions; construction; funding.

§ 41-19-301. Mississippi Adolescent Center for juveniles with an intellectual disability in Brookhaven; admissions; construction; funding.

(1) The Mississippi Adolescent Center located in Brookhaven, Mississippi, is recognized as now existing and shall be for the care and treatment of persons with an intellectual disability. The facility shall have the power to receive and hold property, real, personal and mixed, as a body corporate. The facility shall be under the direction and control of the State Board of Mental Health.

(2) Admissions shall be limited to adolescents with an intellectual disability who have been committed to the center by a youth court judge or chancellor in accordance with Section 41-21-109, or who are voluntarily admitted to the center.

(3) The Mississippi Adolescent Center is authorized to establish and operate a school to meet the educational needs of its clients.

(4) With funds provided by the Legislature, by direct appropriation or authorized bond issue, with federal matching funds, or with any other available funds, the Bureau of Building, Grounds and Real Property Management may construct and equip the necessary residential and service buildings and other facilities to care for the residents of the Mississippi Adolescent Center. The general design of the facility and all construction plans shall be approved and recommended by the State Department of Mental Health.

(5) The Mississippi Adolescent Center shall be administered by the State Board of Mental Health. Provisions relating to the admission and care of residents at the facility shall be promulgated by the board.

(6) Persons admitted to the Mississippi Adolescent Center shall be assessed support and maintenance costs in accordance with the provisions of the state reimbursement laws as they apply to other state institutions.

(7) Any person who (a) knowingly and unlawfully or improperly causes a person to be adjudged to be a person with an intellectual disability, (b) procures the escape of a legally committed resident or knowingly conceals an escaped legally committed resident of the facility, or (c) unlawfully brings any firearm, deadly weapon or explosive into the facility or its grounds, or passes any thereof to a resident, employee or officer of the school, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Fifty Dollars ($50.00), or more than Two Hundred Dollars ($200.00), imprisonment for not less than six (6) months, or both.

(8) The Mississippi Adolescent Center is designated as a state agency for carrying out the purposes of any act of the Congress of the United States, now existing or at any time hereafter enacted, pertaining to intellectual disabilities.

HISTORY:

Laws, 2002, ch. 528 , § 1; Laws, 2009, ch. 563, § 13; Laws, 2010, ch. 476, § 56, eff from and after passage (approved Apr. 1, 2010).

CHAPTER 21.

INDIVIDUALS WITH MENTAL ILLNESS OR AN INTELLECTUAL DISABILITY

In General. 41-21-1
Persons in Need of Mental Treatment. 41-21-61
Crisis Intervention Teams. 41-21-131
Crisis Intervention Mental Health Fund. 41-21-151
Screening, Testing, and Investigation by State Board of Health. 41-21-201

IN GENERAL

Sec.
41-21-1 through 41-21-29. Repealed.
41-21-31 and 41-21-33. Repealed.
41-21-35. Legal settlement of persons with mental illness and persons with an intellectual disability.
41-21-37 through 41-21-41. Repealed.
41-21-43 and 41-21-45. Repealed.

§§ 41-21-1 through 41-21-29. Repealed.

Repealed by Laws, 1975, ch. 492, § 10, eff from and after July 1, 1975.

§ 41-21-1. [Laws, 1948, ch. 394, §§ 1, 8; Laws, 1950, ch. 342, §§ 1, 2, 9]

§ 41-21-3. [Laws, 1948, ch. 394, §§ 1, 8; Laws, 1950, ch. 342, §§ 1, 2, 9]

§ 41-21-5. [Laws, 1948, ch. 394, § 2; Laws, 1950, ch. 342, § 3; Laws, 1971, ch. 430, § 1]

§ 41-21-7. [Laws, 1948, ch. 394, § 3; Laws, 1950, ch. 342, § 4; Laws, 1964, ch. 428]

§ 41-21-9. [Laws, 1948, ch. 394, § 4; Laws, 1950, ch. 342, § 5; Laws, 1974, ch. 391]

§ 41-21-11. [Laws, 1948, ch. 394, §§ 5-12; Laws, 1950, ch. 342, §§ 6-13]

§ 41-21-13. [Laws, 1948, ch. 394, §§ 5-12; Laws, 1950, ch. 342, §§ 6-13]

§ 41-21-15. [Laws, 1948, ch. 394, §§ 5-12; Laws, 1950, ch. 342, §§ 6-13]

§ 41-21-17. [Laws, 1948, ch. 394, §§ 5-12; Laws, 1950, ch. 342, §§ 6-13]

§ 41-21-19. [Laws, 1948, ch. 394, §§ 5-12; Laws, 1950, ch. 342, §§ 6-13]

§ 41-21-21. [Laws, 1948, ch. 394, §§ 5-12; Laws, 1950, ch. 342, §§ 6-13]

§ 41-21-23. [Laws, 1948, ch. 394, §§ 5-12; Laws, 1950, ch. 342, §§ 6-13]

§ 41-21-25. [Laws, 1948, ch. 394, §§ 5-12; Laws, 1950, ch. 342, §§ 6-13]

§ 41-21-27. [Laws, 1950, ch. 342, § 14]

§ 41-21-29. [Laws, 1950, ch. 464]

Editor's Notes —

Former § 41-21-1 dealt in general terms with procedures for the commitment of persons to mental institutions and for the adjudication of mental illness or disability. For present provisions regarding commitment proceedings, see §§ 41-21-61 et seq.

Former § 41-21-3 required the appointment of guardians of the persons or estates, or either, of persons adjudged to be of unsound mind and incapable of taking care of their persons or property. For present provisions regarding commitment proceedings, see §§ 41-21-61 et seq.

Former § 41-21-5 provided for the commencement of commitment proceedings by an affidavit in chancery court, for costs, and for notification of the nearest of kin or guardian, if known, of the person alleged to be of unsound mind. For present provisions regarding commitment proceedings, see §§ 41-21-61 et seq.

Former § 41-21-7 provided for the person alleged by affidavit as being of unsound mind to be taken into custody by the sheriff for the purpose of being examined by two qualified physicians, and provided for their appointment. For present provisions regarding commitment proceedings, see §§ 41-21-61 et seq.

Former § 41-21-9 related to the mental and physical examination by two qualified physicians of the person alleged to be of unsound mind, the place of such examination, witnesses and testimony, and the report and certificate of the examining physicians. For present provisions regarding commitment proceedings, see §§ 41-21-61 et seq.

Former § 41-21-11 dealt with the certificate of findings of the two physicians examining a person alleged to be of unsound mind, the form and details of filing such certificate, and granted the examining physicians immunity from civil or criminal liability for their services. For present provisions regarding commitment proceedings, see §§ 41-21-61 et seq.

Former § 41-21-13 dealt with the procedure following examination and the filing of the certificate, the discharge of the subject if he is found not to be of unsound mind, the appointment of a guardian if he is found to be of unsound mind but does not require confinement, and his commitment and delivery to a mental institution if he does require confinement. For present provisions regarding commitment proceedings, see §§ 41-21-61 et seq.

Former § 41-21-15 provided for a hearing before the chancellor on the issue of the mental condition of the person adjudged to be of unsound mind. For present provisions regarding commitment proceedings, see §§ 41-21-61 et seq.

Former § 41-21-17 fixed liability for the payment of expenses of the hearing provided for by former § 41-21-15 and of conveying the subject to and from the site of the hearing. For present provisions regarding commitment proceedings, see §§ 41-21-61 et seq.

Former § 41-21-19 provided for the fees and expenses of the two examining physicians, the chancery clerk, and the sheriff. For present provisions regarding commitment proceedings, see §§ 41-21-61 et seq.

Former § 41-21-21 contained provisions for the handling of persons charged with criminal offenses and alleged or adjudicated to be of unsound mind. For present provisions regarding commitment proceedings, see §§ 41-21-61 et seq.

Former § 41-21-23 contained procedures for the examination and commitment of a person without the affidavit provided for in former § 41-21-5. For present provisions regarding commitment proceedings, see §§ 41-21-61 et seq.

Former § 41-21-25 fixed liability for the care and payment of expenses of maintenance of mental patients in state mental hospitals. For present provisions regarding commitment proceedings, see §§ 41-21-61 et seq.

Former § 41-21-27 provided for the adjudication of the restoration to reason of a person for whom a guardian had been appointed or who had been adjudged of unsound mind, under the provisions of former §§ 41-21-1 through 41-21-27, upon petition and hearing in chancery. For present provisions regarding commitment proceedings, see §§ 41-21-61 et seq.

Former § 41-21-29 authorized the transportation of mentally ill patients who are residents of other states to their states of residence and the payment of expenses therefor. For present provisions regarding commitment proceedings, see §§ 41-21-61 et seq.

§§ 41-21-31 and 41-21-33. Repealed.

Repealed by Laws, 1974, ch. 567, § 15, eff from and after passage (approved April 23, 1974).

§ 41-21-31. [Codes, 1892, § 2832; 1906, § 3216; Hemingway's 1917, § 5558; 1930, § 4573; 1942, § 6906]

§ 41-21-33. [Laws, 1946, ch. 485; Laws, 1948, ch. 400, §§ 1, 2]

Editor's Notes —

Former § 41-21-31 dealt with the liability for care and maintenance of mental patients not covered by former § 41-21-25.

Former § 41-21-33 related to the care of harmless mentally ill persons at institutions under the control of the former board of trustees of mental institutions.

The 1974 repealing act created a new state board and department of mental health to act in lieu of certain abolished agencies. See §§ 41-4-1 et seq. Section 16 of the repealing act provided, in part, that "all powers, duties and responsibilities transferred by this act shall remain under the authority and responsibility of existing state agencies until July 1, 1974."

§ 41-21-35. Legal settlement of persons with mental illness and persons with an intellectual disability.

The rule as to the legal settlement of paupers shall apply in cases of persons with mental illness and persons with an intellectual disability.

HISTORY:
Codes, 1880, § 667; 1892, § 2834; 1906, § 3218; Hemingway's 1917, § 5560; 1930, § 4575; 1942, § 6908; Laws, 2008, ch. 442, § 16; Laws, 2010, ch. 476, § 57, eff from and after passage (approved Apr. 1, 2010).

Cross References —
Settlement of paupers, see § 43-31-19.

§§ 41-21-37 through 41-21-41. Repealed.

Repealed by Laws, 1975, ch. 492, § 10, eff from and after July 1, 1975.

§ 41-21-37. [Codes, 1892, §§ 2841, 2842; 1906, §§ 3225, 3226; Hemingway's 1917, §§ 5567, 5568; 1930, §§ 4582, 4583; 1942, §§ 6915, 6916]

§ 41-21-39. [Codes, 1892, §§ 2841, 2842; 1906, §§ 3225, 3226; Hemingway's 1917, §§ 5567, 5568; 1930, §§ 4582, 4583; 1942, §§ 6915, 6916]

§ 41-21-41. [Codes, 1871, §§ 2091, 2095; 1880, § 664; 1892, § 2845; 1906, § 3230; Hemingway's 1917, § 5572; 1930, § 4586; 1942, § 6919]

Editor's Notes —
Former § 41-21-37 dealt with the issuance and execution of warrants for the arrest and return to custody of escaped mental patients.

Former § 41-21-39 related to the discharge and certification of sanity of mental patients found not to be insane.

Former § 41-21-41 related to the removal from state mental hospitals of patients found to be harmless incurables and of patients restored to reason.

The 1975 act which repealed the above sections contained new provisions dealing with persons in need of mental treatment. See §§ 41-21-61 et seq.

§§ 41-21-43 and 41-21-45. Repealed.

Repealed by Laws, 2008, ch. 442, § 50, effective from and after July 1, 2008.

§ 41-21-43. [Codes, Hemingway's 1921 Supp. § 5728b1; 1930, § 7291; 1942, § 6781; Laws, 1920, ch. 210.]

§ 41-21-45. [Codes, Hemingway's 1921 Supp. § 5728c1; 1930, § 7292; 1942, § 6782; Laws, 1920, ch 210.]

Editor's Notes —
Former § 41-21-43 required counties to temporarily provide for the maintenance of indigent mentally retarded persons.

Former § 41-21-45 prohibited cohabitation with mentally retarded persons.

PERSONS IN NEED OF MENTAL TREATMENT

Sec.	
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Sec.
41-21-67. Person to be taken into custody; community mental health center as first point of entry for screening and treatment; referral to crisis intervention team; appointment of examining physicians, or physician and psychologist, nurse practitioner or physician assistant; appointment of attorney; emergency patient status; notification to Department of Human Services of possible danger to minor child under certain circumstances.
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41-21-97. Confidentiality of hospital records and information; exceptions.
41-21-99. Continued care of patients.
41-21-101. Admissions and commitments not adjudication of incompetency.
41-21-102. Patients' rights.
41-21-103. Voluntary admissions for treatment.
41-21-105. Civil and criminal immunity.
41-21-107. Criminal offenses.
41-21-109. Rehabilitation facilities for adolescents with mental illness or with an intellectual disability; establishment.

§ 41-21-61. Definitions.

As used in Sections 41-21-61 through 41-21-107, unless the context otherwise requires, the following terms defined have the meanings ascribed to them:

(a) "Chancellor" means a chancellor or a special master in chancery.

(b) "Clerk" means the clerk of the chancery court.

(c) "Director" means the chief administrative officer of a treatment facility or other employee designated by him as his deputy.

(d) "Interested person" means an adult, including, but not limited to, a public official, and the legal guardian, spouse, parent, legal counsel, adult, child next of kin, or other person designated by a proposed patient.

(e) "Person with mental illness" means any person who has a substantial psychiatric disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand, which (i) is manifested by instances of grossly disturbed behavior or faulty perceptions; and (ii) poses a substantial likelihood of physical harm to himself or others as demonstrated by (A) a recent attempt or threat to physically harm himself or others, or (B) a failure to provide necessary food, clothing, shelter or medical care for himself, as a result of the impairment. "Person with mental illness" includes a person who, based on treatment history and other applicable psychiatric indicia, is in need of treatment in order to prevent further disability or deterioration which would predictably result in dangerousness to himself or others when his current mental illness limits or negates his ability to make an informed decision to seek or comply with recommended treatment. "Person with mental illness" does not include a person having only one or more of the following conditions: (1) epilepsy, (2) an intellectual disability, (3) brief periods of intoxication caused by alcohol or drugs, (4) dependence upon or addiction to any alcohol or drugs, or (5) senile dementia.

(f) "Person with an intellectual disability" means any person (i) who has been diagnosed as having substantial limitations in present functioning, manifested before age eighteen (18), characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two (2) or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work, and (ii) whose recent conduct is a result of having an intellectual disability and poses a substantial likelihood of physical harm to himself or others in that there has been (A) a recent attempt or threat to physically harm himself or others, or (B) a failure and inability to provide necessary food, clothing, shelter, safety, or medical care for himself.

(g) "Physician" means any person licensed by the State of Mississippi to practice medicine in any of its branches.

(h) "Psychologist" when used in Sections 41-21-61 through 41-21-107, means a licensed psychologist who has been certified by the State Board of Psychological Examiners as qualified to perform examinations for the purpose of civil commitment.

(i) "Treatment facility" means a hospital, community mental health center, or other institution qualified to provide care and treatment for persons with mental illness, persons with an intellectual disability or chemically dependent persons.

(j) "Substantial likelihood of bodily harm" means that:

(i) The person has threatened or attempted suicide or to inflict serious bodily harm to himself; or

(ii) The person has threatened or attempted homicide or other violent behavior; or

(iii) The person has placed others in reasonable fear of violent behavior and serious physical harm to them; or

(iv) The person is unable to avoid severe impairment or injury from specific risks; and

(v) There is substantial likelihood that serious harm will occur unless the person is placed under emergency treatment.

HISTORY:

Laws, 1975, ch. 492, § 1; Laws, 1976, ch. 401, § 2; Laws, 1984, ch. 477, § 1; Laws, 1985, ch. 454, § 1; Laws, 1994, ch. 533, § 1; Laws, 1994, ch. 599, § 1; Laws, 2010, ch. 476, § 58; Laws, 2010, ch. 548, § 1, eff from and after July 1, 2010.

Joint Legislative Committee Note —

Section 1 of ch. 548, Laws of 2010, effective July 1, 2010 (approved April 28, 2010), amended this section. Section 58 of ch. 476, Laws of 2010, effective upon passage (approved April 1, 2010), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 22, 2010, meeting of the Committee.

Cross References —

Clerk of court to provide to Department of Public Safety certain information about persons determined to be individuals with mental illness or an intellectual disability under this chapter, see § 9-1-49.

Representation of persons in need of mental treatment by public defender, see § 25-32-9.

Prohibition against full-time staff member of resident treatment facility operated by department of mental health conducting initial involuntary commitment examination, see § 41-21-67.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Requirements for outpatient commitments, see § 41-21-74.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Civil commitment proceedings required in order for youth court to commit minor to State institution designed for special care, see § 43-21-611.

Appointment of guardians for persons in need of mental treatment, see § 93-13-111.

Statutory provisions for commitment of persons in need of mental treatment not impairing validity of prior guardianships for persons of unsound mind, see § 93-13-128.

Procedure for restoration to reason and discharge of guardian of person for whom guardian has been appointed or who has been found in need of mental treatment, see § 93-13-151.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

Insanity defense, see Miss. Uniform Rules of Circuit and County Court Practice, Rule 9.07.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Person with mental illness.

1. In general.

The term "public treatment facility" in § 41-21-63, which provides that no person shall be committed to a public treatment facility except under the provisions of the involuntary commitment statutes, encompasses private treatment facilities. Lee v. Alexander, 607 So. 2d 30 (Miss. 1992).

There are 2 exclusive methods available to courts for committing an individual indefinitely to a state hospital, due to mental disorders. The first method of commitment requires acquittal by a jury on the basis of insanity or feeble-mindedness; § 99-13-7 deals with acquittal of a crime by reason of insanity, and § 99-13-9 provides for acquittal for feeble-mindedness. The second method of indefinite commitment requires a hearing before a chancellor prior to the individual being ordered to the state hospital for treatment and is found in §§ 41-21-61 through 41-21-107. The legislature has not seen fit to bestow upon circuit judges the power to indefinitely commit an individual without the concurrence of a jury or without deferring to the chancellor through §§ 41-21-61 to 41-21-107 and, therefore, commitment of an individual to a state hospital requires more than a mere order by a circuit court judge. Hendrix v. Gammage, 556 So. 2d 354, 1990 Miss. LEXIS 25 (Miss. 1990).

A person may not be involuntarily committed to a state mental institution unless (1) there is clear and convincing evidence that the person is in substantial need of mental treatment, and (2) the state renders to him a minimally adequate course of care and treatment; accordingly, a deceased had a substantive right not to be "warehoused," and if he was substantially mentally ill, the state's right to commit him involuntarily was conditioned on its affording him minimally adequate care and treatment. Chill v. Mississippi Hospital Reimbursement Com., 429 So. 2d 574, 1983 Miss. LEXIS 2563 (Miss. 1983).

2. Person with mental illness.

Detailed office notes presented at the involuntary commitment hearing by the two doctors who examined the individual were sufficient to meet the evidentiary requirements under Miss. Code Ann. § 41-21-61(e). In re Bauman, 878 So. 2d 1033, 2004 Miss. App. LEXIS 690 (Miss. Ct. App. 2004).

In defendant's capital murder case, defendant produced enough evidence to be granted leave to proceed with a petition for post-conviction relief in the trial court on the issue of his mental retardation where he submitted expert testimony regarding his low IQ level. Goodin v. State, 856 So. 2d 267, 2003 Miss. LEXIS 353 (Miss. 2003), cert. denied, 541 U.S. 947, 124 S. Ct. 1681, 158 L. Ed. 2d 375, 2004 U.S. LEXIS 2196 (U.S. 2004), overruled, Lynch v. State, 951 So. 2d 549, 2007 Miss. LEXIS 34 (Miss. 2007).

Evidence that a person alleged to be mentally ill had molested a cousin as a child was properly excluded by the trial court as such evidence did not show a "recent attempt" to harm others and there was no evidence indicating that the person had in the past been charged or convicted of pedophilia. McCorkle v. McCorkle, 811 So. 2d 258, 2001 Miss. App. LEXIS 9 (Miss. Ct. App. 2001).

OPINIONS OF THE ATTORNEY GENERAL

Commitment proceeding is specialized litigation; $75 is fee, if affiant is able to pay same. 1993 Miss. Op. Att'y Gen. 514.

There is no specific procedure outlined in Sections 41-21-61, et seq. regarding court orders to require committed patient to take medication; such a proceeding would be similar to procedures delineated in Sections 41-21-81 and 41-21-99 and burden to obtain order would be upon treatment facility, and not on local authorities in originating jurisdiction. 1994 Miss. Op. Att'y Gen. 68.

There is no indication that Sections 41-30-1 et seq. and Sections 41-21-61 et seq. are in anyway interchangeable and to admit or commit individual under mistaken statutory provision is denial of due process rights. 1994 Miss. Op. Att'y Gen. 999.

Senate Bill 2339 of 2005 [Chapter 501, Laws of 2005] does not, by its express terms, amend, modify or repeal Sections 9-5-255 and 41-21-61 (a). 2005 Miss. Op. Att'y Gen. 206.

RESEARCH REFERENCES

ALR.

29 A.L.R. Proof of Facts 2d 571, Phobic Neurosis (Phobic Reaction) Following Trauma.

§ 41-21-63. Commitment proceedings; jurisdiction of chancery court and circuit court.

(1) No person, other than persons charged with crime, shall be committed to a public treatment facility except under the provisions of Sections 41-21-61 through 41-21-107 or 43-21-611 or 43-21-315. However, nothing herein shall be construed to repeal, alter or otherwise affect the provisions of Section 35-5-31 or to affect or prevent the commitment of persons to the Veterans Administration or other agency of the United States under the provisions of and in the manner specified in those sections.

(2) The chancery court, or the chancellor in vacation shall have jurisdiction under Sections 41-21-61 through 41-21-107 except over persons with unresolved felony charges pending.

(3) The circuit court shall have jurisdiction under Sections 99-13-7, 99-13-9 and 99-13-11.

HISTORY:

Laws, 1975, ch. 492, § 2; Laws, 1976, ch. 401, § 3; Laws, 1984, ch. 477, § 2; Laws, 1985, ch. 454, § 6; Laws, 1994, ch. 533, § 1; Laws, 1994, ch. 599, § 2; Laws, 1996, ch. 430, § 2; Laws, 2010, ch. 398, § 2, eff from and after July 1, 2010.

Cross References —

Clerk of court to provide to Department of Public Safety certain information about persons determined to be individuals with mental illness or an intellectual disability under this chapter, see § 9-1-49.

Establishment of State Board of Mental Health and State Department of Mental Health, see §§ 41-4-1 et seq.

Retention of respondent as emergency patient prior to formal commitment, see § 41-21-67.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Prohibition against involuntary commitment of persons whose primary problems are physical disabilities associated with old age or infant birth defects, see § 41-21-73.

Deportation of nonresidents, see § 41-21-91.

Effect of commitment upon patients' civil rights, see § 41-21-101.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Voluntary admission of person with mental illness or an intellectual disability of particular age or marital status, see § 41-21-103.

Hearing on petition of voluntary admittee to Mississippi State Hospital at Whitfield to leave facility, see § 41-21-103.

Initiation of proceedings by the commissioner of corrections for the commitment of offenders with mental illness or an intellectual disability, see § 47-5-120.

Criminal offense for sending sane person to psychiatric hospital or institution, see § 97-3-13.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Construction and application, generally.
3. Jurisdiction.
4. Evidence.

1. In general.

Due process clause did not oblige state to make its civil commitment processes available to those who had been charged with or convicted of crimes, even if arrestee would have had due process right to notice and hearing before being transferred to mental health facility. McKlemurry v. Hendrix, 971 F. Supp. 1089, 1997 U.S. Dist. LEXIS 10519 (S.D. Miss. 1997).

Arrestee had no due process protection against being arrested for probation violation of possessing beer, despite his claim that possession of beer was manifestation of depression that would have warranted civil commitment rather than arrest; although arresting officers were not trained mental health professionals, there was no demonstration that arrestee met criteria for insanity. McKlemurry v. Hendrix, 971 F. Supp. 1089, 1997 U.S. Dist. LEXIS 10519 (S.D. Miss. 1997).

Arrestee, who had been arrested for probation violation of possessing beer, did not have equal protection right to civil commitment, rather than incarceration. McKlemurry v. Hendrix, 971 F. Supp. 1089, 1997 U.S. Dist. LEXIS 10519 (S.D. Miss. 1997).

Statute precluding civil commitment to state psychiatric hospital of those charged with crimes did not proscribe provision of treatment, psychiatric or otherwise, for persons charged with crimes and, thus, statute did not violate equal protection; county could provide arrestee with treatment for his mental illness, but responsibility for providing treatment was county's duty, not State's duty. McKlemurry v. Hendrix, 971 F. Supp. 1089, 1997 U.S. Dist. LEXIS 10519 (S.D. Miss. 1997).

This section [Code 1942, § 6917] does not absolve from liability those who by false and fraudulent certificates mislead the asylum authorities. Bacon v. Bacon, 76 Miss. 458, 24 So. 968, 1898 Miss. LEXIS 122 (Miss. 1898).

The section [Code 1942, § 6909] does not conflict with any provision of the state constitution, nor with the 14th amendment to the Federal Constitution. Fant v. Buchanan, 17 So. 371 (Miss. 1895).

2. Construction and application, generally.

The term "public treatment facility" in § 41-21-63, which provides that no person shall be committed to a public treatment facility except under the provisions of the involuntary commitment statutes, encompasses private treatment facilities. Lee v. Alexander, 607 So. 2d 30 (Miss. 1992).

Where the alleged incompetent owner of realty and his guardian were both made parties to a proceeding to foreclose a trust deed given by the guardian, and the owner appeared in the proceeding to contest confirmation of the sale on the ground of invalidity of the adjudication of insanity and appointment of a guardian because the owner was not served with process, questions as to the regularity and efficacy of the foreclosure proceedings were res judicata in a subsequent proceeding to remove the cloud from the title (the sale having been confirmed), if the owner was sane, since he was not only properly summoned but appeared and resisted the entry of the final decree on the identical grounds urged in the proceeding to clear the title, and they were also res judicata, even if the owner was insane and the appointment of the guardian was invalid because no process had been served on the owner in the incompetency proceedings, since he was properly sued through the guardian, who was at least invested with the capacities of a guardian ad litem or next friend. Dana v. Zerkowsky, 192 Miss. 302, 5 So. 2d 423, 1942 Miss. LEXIS 4 (Miss. 1942).

A superintendent of an insane hospital is entitled to the custody of an adjudged lunatic committed to it by order of the court. Mabry v. Hoye, 124 Miss. 144, 87 So. 4, 1920 Miss. LEXIS 536 (Miss. 1921).

This section [Code 1942, § 6909] is authority for confining dangerous or indigent lunatics for the protection of themselves and the safety of the public and the clerk may exercise such authority in vacation and his act may be revised by the court and either set aside or approved. Baum v. Greenwald, 95 Miss. 765, 49 So. 836, 1909 Miss. LEXIS 293 (Miss. 1909).

3. Jurisdiction.

If criminal defendant is not competent to assist in defense, court should enter order so finding and commit him to mental institution or such other facility as court may deem appropriate under circumstances, to receive treatment for his condition, and order of commitment should require regular reports advising court: (1) whether there is substantial probability that defendant will become mentally competent to stand trial; (2) whether defendant is progressing toward competency; and, if neither of these conditions occurs within reasonable time, judge should order civil commitment proceedings be instituted. Gammage v. State, 510 So. 2d 802, 1987 Miss. LEXIS 2641 (Miss. 1987).

Where indictment for murder was, on motion of state, passed to files, and defendant subsequently adjudged insane and committed to asylum by chancery court, circuit court was not deprived of jurisdiction to try defendant for murder. Byrd v. State, 179 Miss. 336, 175 So. 190, 1937 Miss. LEXIS 30 (Miss. 1937).

Where prisoner was in custody of circuit court under indictment for felony, circuit court could pass upon question of his sanity, despite prior adjudication of insanity by chancery court. Hoye v. State, 169 Miss. 111, 152 So. 644, 1934 Miss. LEXIS 15 (Miss. 1934).

But where a person is held in jail under indictment by an order of the circuit court he is in the exclusive jurisdiction of that court and the chancery court has no jurisdiction to inquire into his sanity. Hawie v. Hawie, 128 Miss. 473, 91 So. 131, 1922 Miss. LEXIS 133 (Miss. 1922).

The chancery courts have jurisdiction of writs of lunacy and the commitment of an adjudged lunatic to an insane hospital and his confinement therein. Mabry v. Hoye, 124 Miss. 144, 87 So. 4, 1920 Miss. LEXIS 536 (Miss. 1921).

4. Evidence.

In a habeas corpus proceeding by one charged with murder and confined to the Mississippi State Hospital after having been found incompetent to stand trial, the petitioner was not denied due process of law where the burden of proof was placed upon him to prove that he had recovered his sanity and was no longer likely to cause harm to himself or others and where the state presented expert testimony that the petitioner was a paranoid schizophrenic, then in tenuous remission, and that he would pose a danger to himself or others if released from the hospital. Bethany v. Stubbs, 393 So. 2d 1351, 1981 Miss. LEXIS 1922 (Miss. 1981).

Under this section [Code 1942, § 6909] a jury may order a person confined where the evidence justifies, but is doubtful. Baum v. Greenwald, 95 Miss. 765, 49 So. 836, 1909 Miss. LEXIS 293 (Miss. 1909).

OPINIONS OF THE ATTORNEY GENERAL

Section 41-21-63(3) limits the circuit court's jurisdiction in commitment proceedings to persons indicted and charged with felonies; consequently, there is no prohibition against the chancery court asserting jurisdiction in civil commitment proceedings where there are unresolved misdemeanor charges pending against the mentally ill person. 1995 Miss. Op. Att'y Gen. 217.

Under Section 43-21-611, the youth court would have original jurisdiction over commitment of a mentally ill juvenile only where that juvenile is already in youth court jurisdiction as abused, neglected, delinquent, in need of supervision or dependent. Jurisdiction over commitment proceedings for adults and for all other juveniles would be in chancery court pursuant to Section 41-21-63. 1996 Miss. Op. Att'y Gen. 148.

RESEARCH REFERENCES

ALR.

Alleged incompetent as witness in lunacy inquisition. 22 A.L.R.2d 756.

Constitutional right to jury trial in proceeding for adjudication of incompetency or insanity or for restoration. 33 A.L.R.2d 1145.

Right, without judicial proceeding, to arrest and detain one who is, or is suspected of being, mentally deranged. 92 A.L.R.2d 570.

Right to relief under Federal Civil Rights Act of 1871 (42 USCS § 1983) for alleged wrongful commitment to or confinement in mental hospital. 16 A.L.R. Fed. 440.

Validity, construction, application, and effect of Civil Rights of Institutionalized Persons Act, 42 USCS §§ 1997-1997j. 93 A.L.R. Fed. 706.

Am. Jur.

53 Am. Jur. 2d, Mentally Impaired Persons §§ 4 et seq.

28 Am. Jur. Proof of Facts 548, Confinement to Mental Institution, Proof No. 17 (proof of confinement to mental institution).

4 Am. Jur. Trials, Incompetency and Commitment Proceedings, §§ 1 et seq.

26 Am. Jur. Trials 97, Representing the Mentally Ill: Civil Commitment Proceedings.

§ 41-21-65. Affidavit for commitment; simplified affidavit form; penalty for filing intentionally false affidavit or filing affidavit in bad faith.

(1) It is the intention of the Legislature that the filing of an affidavit under this section be a simple, inexpensive, uniform, and streamlined process for the purpose of facilitating and expediting the care of individuals in need of treatment.

(2) If any person is alleged to be in need of treatment, any relative of the person, or any interested person, may make affidavit of that fact and shall file the affidavit with the clerk of the chancery court of the county in which the person alleged to be in need of treatment resides; provided, however, that a chancellor or duly appointed special master may, in his or her discretion, hear the matter in the county in which the person may be found. The chancellor is authorized to immediately transfer the cause of a person alleged to be in need of treatment from the county where the person was found to the person's county of residence. The affidavit shall set forth the name and address of the proposed patient's nearest relatives and whether the proposed patient resides or has visitation rights with any minor children, if known, and the reasons for the affidavit. The affidavit must contain factual descriptions of the proposed patient's recent behavior, including a description of the behavior, where it occurred, and over what period of time it occurred, if known. Each factual allegation may be supported by observations of witnesses named in the affidavit. Because of the emergency nature of those affidavits, at the affiant's request the chancery clerk shall provide the affiant with the one-page affidavit form developed by the Department of Mental Health, which the affiant may complete and file without the need for consulting or retaining an attorney. The Department of Mental Health, in consultation with the Mississippi Chancery Clerks' Association, shall develop a simple, one-page affidavit form for the use of affiants as provided in this subsection, which shall be used in all counties in

the state. No chancery clerk shall require an affiant to retain an attorney for the filing of an affidavit under this section.

(3) The chancery clerk may charge the affiant a total fee for all services equal to the amount set out in Section 25-7-9(o), and the appropriate state and county assessments as required by law.

(4) The prohibition against charging the affiant other fees, expenses, or costs shall not preclude the imposition of monetary criminal penalties under Section 41-21-107 or any other criminal statute, or the imposition by the chancellor of monetary penalties for contempt if the affiant is found to have filed an intentionally false affidavit or filed the affidavit in bad faith for a malicious purpose.

HISTORY:

Laws, 1975, ch. 492, § 3(1); Laws, 1984, ch. 477, § 3; Laws, 2004, ch. 565, § 1; Laws, 2009, ch. 525, § 1; Laws, 2010, ch. 398, § 3; Laws, 2014, ch. 448, § 1, eff from and after July 1, 2014.

Cross References —

Clerk of court to provide to Department of Public Safety certain information about persons determined to be individuals with mental illness or an intellectual disability under this chapter, see § 9-1-49.

Definition of an "interested person" for purposes of commitment of persons in need of mental health treatment, see § 41-21-61.

Provisions relative to taking person into custody, appointment of examining physicians, appointment of attorney, and emergency patient status, see § 41-21-67.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Prohibition against involuntary commitment of persons whose primary problems are physical disabilities associated with old age or infant birth defects, see § 41-21-73.

Effect of commitment upon patients' civil rights, see § 41-21-101.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Patient's right to program of care and treatment designed to render further custody or institutionalization unnecessary, see § 41-21-102.

Voluntary admissions for treatment, see § 41-21-103.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Construction with other law.

1. In general.

Trial court properly dismissed healthcare providers' motion to dismiss an action filed by a decedent's wife and daughter because the complaint stated negligence claims for the decedent's death; it was foreseeable that if the healthcare providers failed in their duty by releasing the decedent without adequate treatment and care, he would resume his attempt to take his own life, and had they properly performed a suicide risk assessment, they could have initiated civil commitment proceedings. Singing River Health Sys. v. Vermilyea, 242 So. 3d 74, 2018 Miss. LEXIS 125 (Miss. 2018).

In civil commitment proceedings involving persons charged with crimes who have been determined to lack the mental capacity to stand trial, an order of the circuit court reciting that the accused has been indicted for a criminal offense and that the court is of the opinion that he is suffering from such mental disease or disorder as to cause him to be incompetent to stand trial and that he should be referred to the chancery court to undergo civil commitment procedures shall be in lieu of the affidavit for commitment provided for in this section. Brown v. Jaquith, 318 So. 2d 856, 1975 Miss. LEXIS 1453 (Miss. 1975).

One held under a valid commitment under this section [Code 1942, § 6909-03] is not entitled to release on habeas corpus because of alleged illegality of a recommitment following an escape. Brown v. United States, 321 F.2d 898, 1963 U.S. App. LEXIS 4351 (5th Cir. Miss. 1963).

The provision of this section [Code 1942, § 6909-03] that the affidavit of "any citizen" may be received in commitment proceedings operates to qualify that of Code 1942, § 1689 making a spouse an incompetent witness. Brown v. United States, 321 F.2d 898, 1963 U.S. App. LEXIS 4351 (5th Cir. Miss. 1963).

A former wife is not a relative within the contemplation of the statute. Wactor v. Wactor, 245 Miss. 132, 146 So. 2d 540, 1962 Miss. LEXIS 539 (Miss. 1962).

2. Construction with other law.

Summary judgment was properly granted on a patient's negligence per se claim against her two stepsons because, while the patient argued that a pauper's affidavit had to be filed by a guardian, which neither stepson was, she cited no statutes or case law forbidding non-guardians to file pauper's affidavits; Miss. Code Ann. § 41-21-65 permitted any relative or any interested person to and file an affidavit regarding a person alleged to be in need of treatment. Miss. Code Ann. § 41-21-67(1), which governed proceedings after an affidavit was filed, instructed trial judges, and whatever implication arose from it regarding private conduct was insubstantial; thus, there is no basis on which to find that either statute created a duty upon which to base a negligence per se claim. Tebo v. Tebo, 550 F.3d 492, 2008 U.S. App. LEXIS 25296 (5th Cir. Miss. 2008).

Summary judgment was properly granted on a patient's malicious prosecution claim against her two stepsons because there no dispute of material fact on the issue of probable cause. There was no evidence that either of the stepsons believed that the behavior they described in their affidavits in order to initiate involuntary commitment proceedings against the patient under Miss. Code Ann. § 41-21-65 did not constitute probable cause; moreover, the patient's admittedly erratic behavior eliminated a genuine issue of material fact as to whether there were no reasonable grounds for the statements in the affidavits and the belief that she was in need of treatment. Tebo v. Tebo, 550 F.3d 492, 2008 U.S. App. LEXIS 25296 (5th Cir. Miss. 2008).

OPINIONS OF THE ATTORNEY GENERAL

Chancellor, rather than Clerk, must make decision on whether or not to have person in need of treatment taken into custody under statute; clerk may not refuse to accept affidavit filed by any person under this section. 1992 Miss. Op. Att'y Gen. 484.

This section permits family members of a person in need of treatment to file the required affidavit in the chancery court of the county of residence of that person. If the person in need of treatment is in the custody of the sheriff in another county, pursuant to § 41-21-67 the chancery court judge of the county of residence of such person has the authority to have the clerk issue a writ to the sheriff of the county where such person is in custody to have the person transported to the clerk or chancellor of the person's county of residence. Alternatively, § 41-21-67 also authorizes the writ to be directed to the sheriff of the county of residence of the person in need of treatment. If the writ is directed to the sheriff of a foreign county, then the sheriff may recover the costs of transportation from the county of residence of the person in need of treatment as provided in § 41-21-79. 2004 Miss. Op. Att'y Gen. 540.

No authority can be found for a municipality to voluntarily pay the costs to initiate civil commitment proceedings on behalf of a prisoner which are the statutory responsibility of the individual or county of residence. 2006 Miss. Op. Att'y Gen. 383.

RESEARCH REFERENCES

Am. Jur.

53 Am. Jur. 2d, Mentally Impaired Persons §§ 4 et seq.

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Form 21 (affidavit – of mental disability – to accompany petition, for hearing to determine competency of alleged incompetent).

28 Am. Jur. Proof of Facts, Confinement to Mental Institution, Proof No. 18 (proof of malice in attempt to have person committed).

§ 41-21-67. Person to be taken into custody; community mental health center as first point of entry for screening and treatment; referral to crisis intervention team; appointment of examining physicians, or physician and psychologist, nurse practitioner or physician assistant; appointment of attorney; emergency patient status; notification to Department of Human Services of possible danger to minor child under certain circumstances.

(1) Whenever the affidavit provided for in Section 41-21-65 is filed with the chancery clerk, the clerk, upon direction of the chancellor of the court, shall issue a writ directed to the sheriff of the proper county to take into custody the person alleged to be in need of treatment and to bring the person before the clerk or chancellor, who shall order pre-evaluation screening and treatment by the appropriate community mental health center established under Section 41-19-31. The community mental health center will be designated as the first point of entry for screening and treatment. If the community mental health center is unavailable, any reputable licensed physician, psychologist, nurse practitioner or physician assistant, as allowed in the discretion of the court, may conduct the pre-evaluation screening and examination as set forth in Section 41-21-69. The order may provide where the person shall be held before the appearance before the clerk or chancellor. However, when the affidavit fails to set forth factual allegations and witnesses sufficient to support the need for treatment, the chancellor shall refuse to direct issuance of the writ. Reapplication may be made to the chancellor. If a pauper's affidavit is filed by a guardian for commitment of the ward of the guardian, the court shall determine if the ward is a pauper and if the ward is determined to be a pauper, the county of the residence of the respondent shall bear the costs of commitment, unless funds for those purposes are made available by the state.

In any county in which a Crisis Intervention Team has been established under the provisions of Sections 41-21-131 through 41-21-143, the clerk, upon the direction of the chancellor, may require that the person be referred to the Crisis Intervention Team for appropriate psychiatric or other medical services before the issuance of the writ.

(2) Upon issuance of the writ, the chancellor shall immediately appoint and summon two (2) reputable, licensed physicians or one (1) reputable, licensed physician and either one (1) psychologist, nurse practitioner or physician assistant to conduct a physical and mental examination of the person at a place to be designated by the clerk or chancellor and to report their findings to the clerk or chancellor. However, any nurse practitioner or physician assistant conducting the examination shall be independent from, and not under the supervision of, the other physician conducting the examination. In all counties in which there is a county health officer, the county health officer, if available, may be one (1) of the physicians so appointed. Neither of the physicians nor the psychologist, nurse practitioner or physician assistant selected shall be related to that person in any way, nor have any

direct or indirect interest in the estate of that person nor shall any full-time staff of residential treatment facilities operated directly by the State Department of Mental Health serve as examiner.

(3) The clerk shall ascertain whether the respondent is represented by an attorney, and if it is determined that the respondent does not have an attorney, the clerk shall immediately notify the chancellor of that fact. If the chancellor determines that the respondent for any reason does not have the services of an attorney, the chancellor shall immediately appoint an attorney for the respondent at the time the examiners are appointed.

(4) If the chancellor determines that there is probable cause to believe that the respondent is mentally ill and that there is no reasonable alternative to detention, the chancellor may order that the respondent be retained as an emergency patient at any licensed medical facility for evaluation by a physician, nurse practitioner or physician assistant and that a peace officer transport the respondent to the specified facility. If the community mental health center serving the county has partnered with Crisis Intervention Teams under the provisions of Sections 41-21-131 through 41-21-143, the order may specify that the licensed medical facility be a designated single point of entry within the county or within an adjacent county served by the community mental health center. If the person evaluating the respondent finds that the respondent is mentally ill and in need of treatment, the chancellor may order that the respondent be retained at the licensed medical facility or any other available suitable location as the court may so designate pending an admission hearing. If necessary, the chancellor may order a peace officer or other person to transport the respondent to that facility or suitable location. Any respondent so retained may be given such treatment as is indicated by standard medical practice. However, the respondent shall not be held in a hospital operated directly by the State Department of Mental Health, and shall not be held in jail unless the court finds that there is no reasonable alternative.

(5)(a) Whenever a licensed psychologist, nurse practitioner or physician assistant who is certified to complete examinations for the purpose of commitment or a licensed physician has reason to believe that a person poses an immediate substantial likelihood of physical harm to himself or others or is gravely disabled and unable to care for himself by virtue of mental illness, as defined in Section 41-21-61(e), then the physician, psychologist, nurse practitioner or physician assistant may hold the person or may admit the person to and treat the person in a licensed medical facility, without a civil order or warrant for a period not to exceed seventy-two (72) hours. However, if the seventy-two-hour period begins or ends when the chancery clerk's office is closed, or within three (3) hours of closing, and the chancery clerk's office will be continuously closed for a time that exceeds seventy-two (72) hours, then the seventy-two-hour period is extended until the end of the next business day that the chancery clerk's office is open. The person may be held and treated as an emergency patient at any licensed medical facility, available regional mental health facility, or crisis intervention center. The physician or psychologist, nurse practitioner or physician assistant who holds the person shall certify in writing the reasons for the need for holding.

If a person is being held and treated in a licensed medical facility, and that person decides to continue treatment by voluntarily signing consent for admission and treatment, the seventy-two-hour hold may be discontinued without filing an affidavit for commitment. Any respondent so held may be given such treatment as indicated by standard medical practice. Persons acting in good faith in connection with the detention and reporting of a person believed to be mentally ill shall incur no liability, civil or criminal, for those acts.

(b) Whenever an individual is held for purposes of receiving treatment as prescribed under paragraph (a) of this subsection, and it is communicated to the mental health professional holding the individual that the individual resides or has visitation rights with a minor child, and if the individual is considered to be a danger to the minor child, the mental health professional shall notify the Department of Human Services prior to discharge if the threat of harm continues to exist, as is required under Section 43-21-353.

This paragraph shall be known and may be cited as the "Andrew Lloyd Law."

HISTORY:

Laws, 1975, ch. 492, § 3(2, 3); Laws, 1984, ch. 477, § 4; Laws, 1985, ch. 454, § 2; Laws, 1994, ch. 533, § 3; Laws, 1994, ch. 599, § 3; Laws, 2000, ch. 493, § 1; Laws, 2008, ch. 513, § 1; Laws, 2010, ch. 398, § 4; Laws, 2010, ch. 476, § 59; Laws, 2010, ch. 548, § 2; Laws, 2014, ch. 351, § 1; Laws, 2014, ch. 448, § 2, eff from and after July 1, 2014.

Joint Legislative Committee Note —

Section 4 of ch. 398, Laws of 2010, effective from and after July 1, 2010 (approved March 17, 2010), Section 59 of ch. 476, Laws of 2010, effective upon passage (approved April 1, 2010), and Section 2 of ch. 548, Laws of 2010, effective from and after July 1, 2010 (approved April 28, 2010), amended this section. The amendments to these sections do not conform and do not meet the Joint Legislative Committee on Compilation, Revision and Publication of Legislation criteria for integration. In this case, Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date. As set out above, this section reflects the language of Section 2 of ch. 548, Laws of 2010.

Section 1 of Chapter 351, Laws of 2014, effective from and after passage (approved March 17, 2014), amended this section. Section 2 of Chapter 448, Laws of 2014, effective from and after July 1, 2014 (approved March 27, 2014), also amended this section. As set out above, this section reflects the language of Section 2 of Chapter 448, Laws of 2014, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

Cross References —

Clerk of court to provide to Department of Public Safety certain information about persons determined to be individuals with mental illness or an intellectual disability under this chapter, see § 9-1-49.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Right of a person to have an attorney present during a physical examination, see § 41-21-69.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Construction with other law.

1. In general.

Authorization of temporary detention of individual in jail upon finding of probable cause to believe person is mentally ill, as provided for in § 41-21-67, does not unconstitutionally violate restrained individual's due process rights because state has compelling interest in seeking detention. Boston v. Lafayette County, 743 F. Supp. 462, 1990 U.S. Dist. LEXIS 9493 (N.D. Miss. 1990).

In a proceeding to obtain examination of one alleged to be suffering from a mental disorder, this section [Code 1942, § 6909-04] and Code 1942, §§ 6909-05 to 6909-08 cited, incidentally. Wactor v. Wactor, 245 Miss. 132, 146 So. 2d 540, 1962 Miss. LEXIS 539 (Miss. 1962).

2. Construction with other law.

Trial court properly affirmed the denial of a former supreme court justice's request for benefits based on work he performed as a court-appointed attorney in a county chancery court because no employee-employer relationship had been established where none of his earnings were ever reported to and he did not contribute to the Public Employees' Retirement System, the chancery court assigned him cases on an as-needed basis, the county did not have control over his day-to-day work, and he maintained a private law practice during the subject period, and the former justice offered no details as to how the participation of the attorney general's office at the hearing resulted in bias or partiality in the adjudication of the proceedings. Easley v. Public Emples.' Ret. Sys., 222 So. 3d 1096, 2017 Miss. App. LEXIS 20 (Miss. Ct. App.), cert. denied, 223 So. 3d 789, 2017 Miss. LEXIS 312 (Miss. 2017).

Summary judgment was properly granted on a patient's negligence per se claim against her two stepsons because, while the patient argued that a pauper's affidavit had to be filed by a guardian, which neither stepson was, she cited no statutes or case law forbidding non-guardians to file pauper's affidavits; Miss. Code Ann. § 41-21-65 permitted any relative or any interested person to and file an affidavit regarding a person alleged to be in need of treatment. Miss. Code Ann. § 41-21-67(1), which governed proceedings after an affidavit was filed, instructed trial judges, and whatever implication arose from it regarding private conduct was insubstantial; thus, there is no basis on which to find that either statute created a duty upon which to base a negligence per se claim. Tebo v. Tebo, 550 F.3d 492, 2008 U.S. App. LEXIS 25296 (5th Cir. Miss. 2008).

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If Chancellor determines that there is probable cause to believe that particular person is mentally ill and there is no reasonable alternative to detention, then Chancellor may order that this person be retained "as emergency patient at any available regional mental health facility or any other available suitable location as court may so designate"; such person shall not be held in hospital operated directly by Department of Mental Health and "shall not be held in jail unless court finds that there is no reasonable alternative." 1992 Miss. Op. Att'y Gen. 484.

Under Section 41-21-67(4), a mentally ill person awaiting a competency hearing or awaiting admission to a mental institution should not be held in a jail unless the court determines that there is no reasonable alternative. 1995 Miss. Op. Att'y Gen. 463.

An osteopath qualifies as a "licensed physician" for the purposes of this section and § 41-21-69. 2004 Miss. Op. Att'y Gen. 44.

Section 41-21-65 permits family members of a person in need of treatment to file the required affidavit in the chancery court of the county of residence of that person. If the person in need of treatment is in the custody of the sheriff in another county, pursuant to this section the chancery court judge of the county of residence of such person has the authority to have the clerk issue a writ to the sheriff of the county where such person is in custody to have the person transported to the clerk or chancellor of the person's county of residence. Alternatively, this section also authorizes the writ to be directed to the sheriff of the county of residence of the person in need of treatment. If the writ is directed to the sheriff of a foreign county, then the sheriff may recover the costs of transportation from the county of residence of the person in need of treatment as provided in § 41-21-79. 2004 Miss. Op. Att'y Gen. 540.

A regional mental health facility may hold individuals for either 72 hours or until the end of the next business day of the chancery clerk's office, in the discretion of the treating physician or psychologist, without exposure to wrongful detention or the like if the longer interpretation is used. 2005 Miss. Op. Att'y Gen. 362.

RESEARCH REFERENCES

Am. Jur.

53 Am. Jur. 2d, Mentally Impaired Persons §§ 4 et seq.

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 81 et seq. (appointment of examiners and summoning of jurors).

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 43-47 (warrant or writ – for apprehension or detention).

§ 41-21-68. Establishment of regional holding facilities for the treatment and holding of individuals for the purpose of civil commitment.

(1) Regional commissions established under Section 41-19-31 et seq. are authorized to establish regional holding facilities for the treatment and holding of any person eighteen (18) years of age or older being held for the purpose of civil commitment.

(2) For the purpose of establishing regional holding facilities, each regional commission is authorized to create a holding facility fund and enter into holding facility cooperative agreements with counties both inside and outside the regional commission's designated region. Each county electing to use a regional holding facility may contribute to the regional commission's holding facility fund. The State of Mississippi may match the county's contribution by paying not more than Two Dollars ($2.00) into the holding facility fund for each One Dollar ($1.00) received from the counties, if sufficient funds are available.

(3) Crisis stabilization units operating and receiving state funds from the Department of Mental Health as of January 1, 2015, shall not be eligible for the holding facility state matching contributions provided for in this section. The matching funds provided for in this section shall only be allocated to holding facilities established under this section. Regional commissions requesting decertification of any such crisis stabilization unit to reestablish the unit as a regional holding facility under this section in order to be eligible for state matching contributions may do so only with the approval of the Department of Mental Health.

(4) Counties not contributing to a regional commission holding facility fund shall not be entitled to use of a holding facility. No patient shall be ordered by any court to a holding facility established under this section if the county in which the commitment action is pending has not entered into a cooperative agreement with a regional commission and has not made a contribution to a regional commission holding facility fund.

(5) Holding facilities established under this section shall at a minimum comply with the operational standards for holding facilities established by the Department of Mental Health. Holding facilities may also seek designation and certification as a crisis stabilization unit, single point of entry, and other type of treatment facility so that they may receive reimbursement from the Division of Medicaid for eligible patients.

(6) Holding facilities and committing courts shall not remove persons from the holding facility unless the removal is for clinical purposes. Persons

taken to a holding facility established under this section and any treatment professionals called as witnesses shall not be required to appear at the court's location for commitment proceedings, except when extraordinary circumstances are found and determined as reflected by a written order of the chancellor. For the purpose of civil commitment hearings, persons being committed and treatment professionals may participate through videoconferencing. Holding facilities established under this section shall have the capacity and ability to provide videoconferencing between the person being held, the committing court, and treatment professionals. Any attorney for the person being held shall be present at the location of the person during videoconferenced hearings and shall have the ability to consult in private with the person.

(7) Holding facilities are authorized to provide any necessary treatment in person or through the use of videoconferencing between the person and the treatment professional.

(8) For purposes of public participation, jurisdiction and venue, the location of the commitment actions for persons being held at holding facilities established under this section shall be deemed to be the county of the committing court, even though the individual being committed and treatment professionals may be physically located in other jurisdictions when participating in any hearing through videoconference. The jurisdiction of the committing court and law enforcement officials transporting persons to holding facilities shall extend to other jurisdictions for the purpose of conducting hearings held by videoconferencing, and for the purpose of holding and transporting individuals to holding facilities established under this section.

(9) Persons being held or detained for the purpose of civil commitment shall not have a jail photograph or "mug shot" published, except as permitted under Section 41-21-97. Persons and businesses who publish those photographs shall immediately remove the photographs from publication, and destroy any and all copies of those photographs in their possession.

HISTORY:

Laws, 2015, ch. 473, § 5, eff from and after July 1, 2015.

§ 41-21-69. Examination by physicians or physician and psychologist, nurse practitioner or physician assistant; presence of attorney.

(1)(a) The physicians or physician and psychologist, nurse practitioner or physician assistant so appointed shall immediately make a full inquiry into the condition of the person alleged to be in need of treatment and shall make a mental examination and physical evaluation of the person, and shall make a report and certificate of their findings of all mental and acute physical problems to the clerk of the court. The report and certificate shall set forth the facts as found by the physicians or physician and psychologist, nurse practitioner or physician assistant and shall state whether or not the examiner is of the opinion that the proposed patient is suffering a disability defined in Sections 41-21-61 through 41-21-107 and should be committed to a treatment facility. The statement shall include the reasons for that opinion. The examination may be based upon a history provided by the patient and the report and certificate of findings shall include an identification of all mental and physical problems identified by the examination.

(b) If the physicians or the physician and psychologist, nurse practitioner or physician assistant so appointed finds: (i) the respondent has mental illness; (ii) the respondent is capable of surviving safely in the community with available supervision from family, friends or others; (iii) based on the respondent's treatment history and other applicable medical or psychiatric indicia, the respondent is in need of treatment in order to prevent further disability or deterioration that would result in significant deterioration in the ability to carry out activities of daily living; and (iv) his or her current mental status or the nature of his or her illness limits or negates his or her ability to make an informed decision to seek voluntarily or comply with recommended treatment; the physicians or the physician and psychologist, nurse practitioner or physician assistant so appointed shall so show on the examination report and certification and shall recommend outpatient commitment. The examining physicians or the physician and psychologist, nurse practitioner or physician assistant shall also show the name, address and telephone number at the proposed outpatient treatment physician or facility.

(2) The examinations shall be conducted and concluded within forty-eight (48) hours after the order for examination and appointment of attorney, and the certificates of the physicians or the physician and psychologist, nurse practitioner or physician assistant shall be filed with the clerk of the court within that time, unless the running of that period extends into nonbusiness hours, in which event the certificate shall be filed at the beginning of the next business day. However, if the examining physicians or the physician and psychologist, nurse practitioner or physician assistant is of the opinion that additional time to complete the examination is necessary, and this fact is communicated to the chancery clerk or chancellor, the clerk or chancellor shall have authority to extend the time for completion of the examination and the filing of the certificate, the extension to be not more than eight (8) hours.

(3) At the beginning of the examination, the respondent shall be told in plain language of the purpose of the examination, the possible consequences of the examination, of his or her right to refuse to answer any questions, and his or her right to have his or her attorney present.

HISTORY:

Laws, 1975, ch. 492, § 3(4, 5); Laws, 1984, ch. 477, § 5; Laws, 1985, ch. 454, § 3; Laws, 1994, ch. 533, § 4; Laws, 1994, ch. 599, § 4; Laws, 2008, ch. 513, § 2; Laws, 2010, ch. 476, § 60, eff from and after passage (approved Apr. 1, 2010).

Cross References —

Clerk of court to provide to Department of Public Safety certain information about persons determined to be individuals with mental illness or an intellectual disability under this chapter, see § 9-1-49.

Provisions relative to taking person into custody, appointment of examining physicians, appointment of attorney, and emergency patient status, see § 41-21-67.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Proceedings pertaining to persons in need of mental treatment, see Miss. Rule Civil Proc. 81.

JUDICIAL DECISIONS

1. In general.

State statutory scheme permitting temporary detention of mentally ill person in jail followed by physical and psychological examination within 24 hours of issuance of writ to take custody, and placing duty on sheriff to keep safe prisoners entrusted to his care, adequately meet procedural due process requirements for purposes of summary judgment motion in federal civil rights action by executor of estate of mentally ill person who died while in jail awaiting examination. Boston v. Lafayette County, 743 F. Supp. 462, 1990 U.S. Dist. LEXIS 9493 (N.D. Miss. 1990).

OPINIONS OF THE ATTORNEY GENERAL

An osteopath qualifies as a "licensed physician" for the purposes of § 41-21-67 and this section. 2004 Miss. Op. Att'y Gen. 44.

RESEARCH REFERENCES

Am. Jur.

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 111-114, 124, 126, 131 (oaths, certificates, special issues – for jury – sanity hearing).

§ 41-21-71. Procedure after examination; release or confinement pending hearing.

If, as a result of the examination, the examiners certify that the person is not in need of treatment, the chancellor or clerk shall dismiss the affidavit without the need for a further hearing. If the chancellor or chancery clerk finds, based upon the physicians' or the physician's and a psychologist's, nurse practitioner's or physician assistant's certificate and any other relevant evidence, that the respondent is in need of treatment and that certificate is filed with the chancery clerk within forty-eight (48) hours after the order for examination, or extension of that time as provided in Section 41-21-69, the clerk shall immediately set the matter for a hearing. The hearing shall be set within seven (7) days of the filing of the certificate unless an extension is requested by the respondent's attorney. In no event shall the hearing be more than ten (10) days after the filing of the certificate.

HISTORY:

Laws, 1975, ch. 492, § 3(6, 7); Laws, 1976, ch. 401, § 4; Laws, 1984, ch. 477, § 6; Laws, 2008, ch. 513, § 3; Laws, 2010, ch. 398, § 5, eff from and after July 1, 2010.

Joint Legislative Committee Note —

In 2009, a typographical error in the second sentence of this section was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting "...based upon the physicians' and physician's and a psychologist's, nurse practitioner's or physician assistant's certificate..." for "...based upon the physicians' and physician and a psychologist's, nurse practitioner's or physician assistant's certificate..." The Joint Committee ratified this correction at its July 22, 2010, meeting.

Cross References —

Clerk of court to provide to Department of Public Safety certain information about persons determined to be individuals with mental illness or an intellectual disability under this chapter, see § 9-1-49.

Guardianship for mentally ill veterans, see §§ 35-5-1 et seq.

Emergency treatment formerly provided for in this section, see § 41-21-67.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Length of initial involuntary commitment of persons with mental illness or an intellectual disability, see § 41-21-73.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Guardianship of incompetent persons generally, see §§ 93-13-121 et seq.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

RESEARCH REFERENCES

Am. Jur.

53 Am. Jur. 2d, Mentally Impaired Persons §§ 4 et seq.

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 221 et seq. (release, discharge, or recommitment of incompetent).

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 41-47 (warrant or writ – for apprehension or detention).

§ 41-21-73. Procedures for hearing; evidence; witnesses; commitment; disposition and findings.

(1) The hearing shall be conducted before the chancellor. However, the hearing may be held at the location where the respondent is being held. Within a reasonable period of time before the hearing, notice of same shall be provided the respondent and his attorney, which shall include: (a) notice of the date, time and place of the hearing; (b) a clear statement of the purpose of the hearing; (c) the possible consequences or outcome of the hearing; (d) the facts that have been alleged in support of the need for commitment; (e) the names, addresses and telephone numbers of the examiner(s); and (f) other witnesses expected to testify.

(2) The respondent must be present at the hearing unless the chancellor determines that the respondent is unable to attend and makes that determination and the reasons therefor part of the record. At the time of the hearing the respondent shall not be so under the influence or suffering from the effects of drugs, medication or other treatment so as to be hampered in participating in the proceedings. The court, at the time of the hearing, shall be presented a record of all drugs, medication or other treatment that the respondent has received pending the hearing, unless the court determines that such a record would be impractical and documents the reasons for that determination.

(3) The respondent shall have the right to offer evidence, to be confronted with the witnesses against him and to cross-examine them and shall have the privilege against self-incrimination. The rules of evidence applicable in other judicial proceedings in this state shall be followed.

(4) If the court finds by clear and convincing evidence that the proposed patient is a person with mental illness or a person with an intellectual disability and, if after careful consideration of reasonable alternative dispositions, including, but not limited to, dismissal of the proceedings, the court finds that there is no suitable alternative to judicial commitment, the court shall commit the patient for treatment in the least restrictive treatment facility that

can meet the patient's treatment needs. Treatment before admission to a state-operated facility shall be located as closely as possible to the patient's county of residence and the county of residence shall be responsible for that cost. Admissions to state-operated facilities shall be in compliance with the catchment areas established by the State Department of Mental Health. A nonresident of the state may be committed for treatment or confinement in the county where the person was found.

Alternatives to commitment to inpatient care may include, but shall not be limited to: voluntary or court-ordered outpatient commitment for treatment with specific reference to a treatment regimen, day treatment in a hospital, night treatment in a hospital, placement in the custody of a friend or relative or the provision of home health services.

For persons committed as having mental illness or having an intellectual disability, the initial commitment shall not exceed three (3) months.

(5) No person shall be committed to a treatment facility whose primary problems are the physical disabilities associated with old age or birth defects of infancy.

(6) The court shall state the findings of fact and conclusions of law that constitute the basis for the order of commitment. The findings shall include a listing of less restrictive alternatives considered by the court and the reasons that each was found not suitable.

(7) A stenographic transcription shall be recorded by a stenographer or electronic recording device and retained by the court.

(8) Notwithstanding any other provision of law to the contrary, neither the State Board of Mental Health or its members, nor the State Department of Mental Health or its related facilities, nor any employee of the State Department of Mental Health or its related facilities, unless related to the respondent by blood or marriage, shall be assigned or adjudicated custody, guardianship, or conservatorship of the respondent.

(9) The county where a person in need of treatment is found is authorized to charge the county of the person's residence for the costs incurred while the person is confined in the county where such person was found.

HISTORY:

Laws, 1975, ch. 492, § 4(1); Laws, 1976, ch. 401, § 5; Laws, 1984, ch. 477, § 7; Laws, 1985, ch. 454, § 7; Laws, 1990, ch. 365, § 1; Laws, 1994, ch. 533, § 5; Laws, 1994, ch. 599, § 5; Laws, 2001, ch. 331, § 1; Laws, 2004, ch. 565, § 2; Laws, 2010, ch. 476, § 61; Laws, 2010, ch. 548, § 3, eff from and after July 1, 2010.

Joint Legislative Committee Note —

Section 3 of ch. 548, Laws of 2010, effective July 1, 2010 (approved April 28, 2010), amended this section. Section 61 of ch. 476, Laws of 2010, effective upon passage (approved April 1, 2010) also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 22, 2010, meeting of the Committee.

Cross References —

Clerk of court to provide to Department of Public Safety certain information about persons determined to be individuals with mental illness or an intellectual disability under this chapter, see § 9-1-49.

Appointment of an attorney, provision for which formerly appeared in this section, see § 41-21-67.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Patient's right to program of care and treatment designed to render further custody or institutionalization unnecessary, see § 41-21-102.

Hearing on petition of voluntary admittee to Mississippi State Hospital at Whitfield to leave facility, see § 41-21-103.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.

In a habeas corpus proceeding by one charged with murder and confined to the Mississippi State Hospital after having been found incompetent to stand trial, the petitioner was not denied due process of law where the burden of proof was placed upon him to prove that he had recovered his sanity and was no longer likely to cause harm to himself or others and where the state presented expert testimony that the petitioner was a paranoid schizophrenic, then in tenuous remission, and that he would pose a danger to himself or others if released from the hospital. Bethany v. Stubbs, 393 So. 2d 1351, 1981 Miss. LEXIS 1922 (Miss. 1981).

OPINIONS OF THE ATTORNEY GENERAL

From and after July 1, 2004 the county of residence of the person committed is responsible for treatment costs incurred prior to admission to a state-operated facility. 2004 Miss. Op. Att'y Gen. 591.

Chancellors do not have the authority to order a county hospital to provide beds to temporarily hold mentally ill patients while they are awaiting transfer to the Mississippi State Hospital, nor do they have the authority to order that a county hospital provide this service free of charge to the county or the patient. 2005 Miss. Op. Att'y Gen. 332.

RESEARCH REFERENCES

ALR.

Modern status of rules as to standard of proof required in civil commitment proceedings. 97 A.L.R.3d 780.

Governmental tort liability for injuries caused by negligently released individual. 6 A.L.R.4th 1155.

Liability of governmental officer or entity for failure to warn or notify of release of potentially dangerous individual from custody. 12 A.L.R.4th 722.

Adequacy of defense counsel's representation of criminal client regarding incompetency, insanity, and related issues. 17 A.L.R.4th 575.

Adequacy of defense counsel's representation of criminal client – issues of incompetency. 70 A.L.R.5th 1.

Adequacy of defense counsel's representation of criminal client – pretrial conduct or conduct at unspecified time regarding issues of insanity. 72 A.L.R.5th 109.

Validity, construction, application, and effect of Civil Rights of Institutionalized Persons Act, 42 USCS §§ 1997-1997j. 93 A.L.R. Fed. 706.

Am. Jur.

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 61 et seq. (notice of hearing).

§ 41-21-74. Requirements for outpatient commitments.

(1) If the commitment order directs outpatient treatment, the outpatient treatment physician may prescribe or administer to the respondent treatment consistent with accepted medical standards.

(2) If the respondent fails or clearly refuses to comply with outpatient treatment, the director of the treatment facility, his designee or an interested person shall make all reasonable efforts to solicit the respondent's compliance.

These efforts shall be documented and, if the respondent fails or clearly refuses to comply with outpatient treatment after such efforts are made, such efforts shall be documented with the court by affidavit. Upon the filing of the affidavit, the sheriff of the proper county is authorized to take the respondent into his custody.

(3) The respondent may be returned to the treatment facility as soon thereafter as facilities are available. The respondent may request a hearing within ten (10) days of his return to the treatment facility. Such hearing shall be held pursuant to the requirements set forth in Section 41-21-81.

(4) The chancery court of the county where the public facility is located or the committing court shall have jurisdiction over matters concerning outpatient commitments when such an order is sought subsequent to an inpatient course of treatment pursuant to Sections 41-21-61 through 41-21-107, 43-21-611, 99-13-7 and 99-13-9. An outpatient shall not have or be charged for a recommitment process within a period of twelve (12) months of the initial outpatient order.

HISTORY:

Laws, 1994, ch. 533, § 6; Laws, 1994, ch. 599, § 6, eff from and after July 1, 1994.

Editor's Notes —

Laws of 1994, chs. 533, § 6, and 599, § 6, both added this section, but chapter 599 contained an additional last sentence, which is included above.

Cross References —

Clerk of court to provide to Department of Public Safety certain information about persons determined to be individuals with mental illness or an intellectual disability under this chapter, see § 9-1-49.

JUDICIAL DECISIONS

1. Jurisdiction.

Plain and unambiguous language of Miss. Code Ann. § 41-21-83 applies broadly, directing that any hearing held pursuant to Miss. Code Ann. § 41-21-74 is to be heard by the Hinds County Chancery Court when the patient is confined at Whitfield; the statute in no way delineates that when a patient is confined at Whitfield, outpatient hearings under Miss. Code Ann. § 41-21-74(1)-(3) must be held in Hinds County, while hearings under § 41-21-74(4) must be held in the county where the public facility is located, despite the patient's confinement at Whitfield. Smith v. State, 229 So. 3d 178, 2017 Miss. App. LEXIS 137 (Miss. Ct. App. 2017).

RESEARCH REFERENCES

Am. Jur.

53 Am. Jur. 2d, Mentally Impaired Persons §§ 4 et seq.

§ 41-21-75. Repealed.

Repealed by Laws, 1984, ch. 477, § 28, eff from and after July 1, 1984. [Laws, 1975, ch. 492, § 4(2-6)]

Editor's Notes —

Former § 41-21-75 provided for hearings before chancellor with respect to the discharge or admission to state hospital. Provisions similar to the ones contained in former section 41-21-75 now appear in section 41-21-73.

Cross References —

Clerk of court to provide to Department of Public Safety certain information about persons determined to be individuals with mental illness or an intellectual disability under this chapter, see § 9-1-49.

§ 41-21-76. Waiver of rights by respondent.

The respondent in any involuntary commitment proceeding held pursuant to the provisions of sections 41-21-61 through 41-21-107 may make a knowing and intelligent waiver of his rights in such proceeding, provided that the waiver is made by his attorney with the informed consent of the respondent and with the approval of the court. The reasons for the waiver shall be made a part of the record.

HISTORY:

Laws, 1976, ch. 401, § 1; Laws, 1984, ch. 477, § 8, eff from and after July 1, 1984.

Cross References —

Clerk of court to provide to Department of Public Safety certain information about persons determined to be individuals with mental illness or an intellectual disability under this chapter, see § 9-1-49.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

RESEARCH REFERENCES

ALR.

Validity, construction, application, and effect of Civil Rights of Institutionalized Persons Act, 42 USCS §§ 1997-1997j. 93 A.L.R. Fed. 706.

§ 41-21-77. Commitment to state hospital or Veterans Administration facility.

If admission is ordered at a treatment facility, the sheriff, his or her deputy or any other person appointed or authorized by the court shall immediately deliver the respondent to the director of the appropriate facility. Neither the Board of Mental Health or its members, nor the Department of Mental Health or its related facilities, nor any employee of the Department of Mental Health or its related facilities, shall be appointed, authorized or ordered to deliver the respondent for treatment, and no person shall be so delivered or admitted until the director of the admitting institution determines that facilities and services are available. Persons who have been ordered committed and are awaiting admission may be given any such treatment in the facility by a licensed physician as is indicated by standard medical practice. Any county facility used for providing housing, maintenance and medical treatment for involuntarily committed persons pending their transportation and admission to a state treatment facility shall be certified by the State Department of Mental Health under the provisions of Section 41-4-7(kk). No person shall be delivered or admitted to any non-Department of Mental Health treatment facility unless the treatment facility is licensed and/or certified to provide the appropriate level of psychiatric care for persons with mental illness. It is the intent of this Legislature that county-owned hospitals work with regional community mental health/intellectual disability centers in providing care to local patients. The clerk shall provide the director of the admitting institution with a certified copy of the court order, a certified copy of the physicians' or the physician's and psychologist's, nurse practitioner's or physician assistant's certificate, a certified copy of the affidavit, and any other information available concerning the physical and mental condition of the respondent. Upon notification from the United States Veterans Administration or other agency of the United States government, that facilities are available and the respondent is eligible for care and treatment in those facilities, the court may enter an order for delivery of the respondent to or retention by the Veterans Administration or other agency of the United States government, and, in those cases the chief officer to whom the respondent is so delivered or by whom he is retained shall, with respect to the respondent, be vested with the same powers as the director of the Mississippi State Hospital at Whitfield, or the East Mississippi State Hospital at Meridian, with respect to retention and discharge of the respondent.

HISTORY:

Laws, 1975, ch. 492, § 4(7); Laws, 1984, ch. 477, § 9; Laws, 1994, ch. 533, § 7; Laws, 1994, ch. 599, § 7; Laws, 2001, ch. 331, § 2; Laws, 2004, ch. 547, § 1; Laws, 2008, ch. 513, § 4; Laws, 2009, ch. 543, § 2; Laws, 2010, ch. 476, § 62; Laws, 2012, ch. 509, § 2, eff from and after July 1, 2012.

Cross References —

Clerk of court to provide to Department of Public Safety certain information about persons determined to be individuals with mental illness or an intellectual disability under this chapter, see § 9-1-49.

Care of veterans in state mental institutions, see § 41-17-11.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.

This section does not violate Article 4, § 86 of the Mississippi Constitution by conditioning the admission of a patient for court-ordered mental treatment on the determination by the admitting institution's director that facilities and services are available; however, this section requires the director of the admitting facility to assume the responsibility of providing treatment, care, and housing for mentally ill minors even if they are not immediately admitted to the facility as soon as they are committed by the lower court. Attorney General v. B.C.M., 744 So. 2d 299, 1999 Miss. LEXIS 232 (Miss. 1999).

It was error for court to declare unconstitutional statute which provides that no person shall be admitted to the State Hospital where the issue before it, whether director of State Hospital should be held in contempt for not admitting person pursuant to commitment order, could have been resolved without reaching the constitutional issue as the director testified that the State Hospital was prepared to take the patient at that time. State v. Watkins, 676 So. 2d 247, 1996 Miss. LEXIS 327 (Miss. 1996).

Notice of show cause hearing at which court intended to inquire as to why patient had not been admitted to State Hospital was not adequate notice to attorney general that court intended to consider constitutionality of statute which provides that no person shall be admitted to the State Hospital until the director determines if facilities and services are available. State v. Watkins, 676 So. 2d 247, 1996 Miss. LEXIS 327 (Miss. 1996).

OPINIONS OF THE ATTORNEY GENERAL

Once a court has ordered an individual placed in the custody of a state treatment facility, that person becomes the state's "burden," which includes the cost of his housing, care, and treatment. 2002 Miss. Op. Att'y Gen. 722.

The burden and responsibility of determining the best interests and treatment of a minor is placed on the entity to which the minor is committed. Providing appropriate care and treatment for a minor who is committed by a court to a treatment facility is the responsibility of the director of that facility. 2003 Miss. Op. Att'y Gen. 542.

This section requires the director of the admitting facility to assume the responsibility of providing treatment and care for all mentally ill patients, whether minors or adults, who are not immediately admitted to the facility as soon as they are committed. 2004 Miss. Op. Att'y Gen. 614.

Chancellors do not have the authority to order a county hospital to provide beds to temporarily hold mentally ill patients while they are awaiting transfer to the Mississippi State Hospital, nor do they have the authority to order that a county hospital provide this service free of charge to the county or the patient. 2005 Miss. Op. Att'y Gen. 332.

RESEARCH REFERENCES

ALR.

Propriety of transferring patient found not guilty by reason of insanity to less restrictive confinement. 43 A.L.R.5th 777.

Am. Jur.

53 Am. Jur. 2d, Mentally Impaired Persons §§ 4 et seq.

§ 41-21-79. Payment of costs.

The costs incidental to the court proceedings including, but not limited to, court costs, prehearing hospitalization costs, cost of transportation, reasonable physician's, psychologist's, nurse practitioner's or physician assistant's fees set by the court, and reasonable attorney's fees set by the court, shall be paid out of the funds of the county of residence of the respondent in those instances where the patient is indigent unless funds for those purposes are made available by the state. However, if the respondent is not indigent, those costs shall be taxed against the respondent or his or her estate. The total amount that may be charged for all of the costs incidental to the court proceedings shall not exceed Four Hundred Dollars ($400.00).

HISTORY:

Laws, 1975, ch. 492, § 4(8); Laws, 1994, ch. 533, § 8; Laws, 1994, ch. 599, § 8; Laws, 2008, ch. 513, § 5; Laws, 2010, ch. 398, § 6, eff from and after July 1, 2010.

Cross References —

Clerk of court to provide to Department of Public Safety certain information about persons determined to be individuals with mental illness or an intellectual disability under this chapter, see § 9-1-49.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

OPINIONS OF THE ATTORNEY GENERAL

The statute places the responsibility for the expenses of medication administered to a person housed in a county detention center to await admission to a mental institution upon the county in which the detained person usually resides. 1998 Miss. Op. Att'y Gen. 561.

Medication expenses for a person housed in a county detention center to await admission to a mental institution may be submitted to the Chancery Court to be assessed as costs in the sanity proceedings of a non-indigent person under the statute. 1998 Miss. Op. Att'y Gen. 561.

The $75 fee received by chancery clerks in lunacy cases covers all of the normal services that a court clerk would perform with regard to any petition or complaint before the court, but would not include administrative services which seem to be more like services that would be performed by a social worker, such as consultations with family or friends, scheduling physicians, providing insurance information to hospitals, and making arrangements for prescreening and follow-ups, etc.; if the chancery court clerk performs such additional administrative services, the court may allow a reasonable fee over and above the clerk's statutory filing fee. 1998 Miss. Op. Att'y Gen. 689.

Pursuant to this section, the cost of transportation of a mental patient should paid out of county funds and the responsibility of the county of the patient's residence; however, other costs of transportation as identified in § 41-21-83 should be the responsibility of the State Board of Mental Health. 2003 Miss. Op. Att'y Gen. 219.

Section 41-21-65 permits family members of a person in need of treatment to file the required affidavit in the chancery court of the county of residence of that person. If the person in need of treatment is in the custody of the sheriff in another county, pursuant to § 41-21-67 the chancery court judge of the county of residence of such person has the authority to have the clerk issue a writ to the sheriff of the county where such person is in custody to have the person transported to the clerk or chancellor of the person's county of residence. Alternatively, § 41-21-67 also authorizes the writ to be directed to the sheriff of the county of residence of the person in need of treatment. If the writ is directed to the sheriff of a foreign county, then the sheriff may recover the costs of transportation from the county of residence of the person in need of treatment as provided in this section. 2004 Miss. Op. Att'y Gen. 540.

No authority can be found for a municipality to voluntarily pay the costs to initiate civil commitment proceedings on behalf of a prisoner which are the statutory responsibility of the individual or county of residence. 2006 Miss. Op. Att'y Gen. 383.

RESEARCH REFERENCES

Am. Jur.
53 Am. Jur. 2d, Mentally Impaired Persons §§ 120 et seq.

§ 41-21-81. Twenty days' observation, diagnosis and treatment; notice of need for further treatment; right to hearing on need for further treatment.

If at any time within twenty (20) days after admission of a patient to a treatment facility the director determines that the patient is in need of continued hospitalization, he shall give written notice of his findings, together with his reasons for such findings, to the respondent, the patient's attorney, the clerk of the admitting court and the two (2) nearest relatives or guardian of the patient, if the addresses of such relatives or guardian are known. The patient, or any aggrieved relative or friend or guardian shall have sixty (60) days from the date of such notice to request a hearing on the question of the patient's commitment for further treatment. The patient, or any aggrieved relative or guardian or friend, may request a hearing by filing a written notice of request within such sixty (60) days with the clerk of the county within which the facility is located; provided, however, that the patient may request such a hearing in writing to any member of the professional staff, which shall be forwarded to the director and promptly filed with the clerk of the county within which the facility is located and provided further that if the patient is confined at the Mississippi State Hospital, Whitfield, Mississippi, said notice of request shall be filed with the Chancery Clerk of the First Judicial District of Hinds County, Mississippi. A copy of the notice of request must be filed by the patient or on his behalf with the director and the chancery clerk of the admitting court. The notice of the need for continued hospitalization shall be explained to the patient by a member of the professional staff and the explanation documented in the clinical record. At the same time the patient shall be advised of his right to request a hearing and of his right to consult a lawyer prior to deciding whether to request the hearing, and the fact that the patient has been so advised shall be documented in the clinical record. Hearings held pursuant to this section shall be held in the chancery court of the county where the facility is located; provided, however, that if the patient is confined at the Mississippi State Hospital at Whitfield, Mississippi, the hearing shall be conducted by the Chancery Court of the First Judicial District of Hinds County, Mississippi.

HISTORY:

Law, 1975, ch. 492, § 5(1); Laws, 1984, ch. 477, § 10; Laws, 2001, ch. 331, § 3, eff from and after July 1, 2001.

Cross References —

Clerk of court to provide to Department of Public Safety certain information about persons determined to be individuals with mental illness or an intellectual disability under this chapter, see § 9-1-49.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceeding, see § 41-21-69.

Hearing procedures, generally, see § 41-21-73.

Requirements for outpatient commitments, see § 41-21-74.

Record statement of reasons for respondent's waiver of rights at involuntary commitment hearing, see § 41-21-76.

Provisions for impartial evaluation of the patient prior to termination of the initial commitment order and court review of such evaluation, including provision that such evaluation shall not preclude a hearing request under this section, see § 41-21-82.

Necessity of a hearing prior to determination of a need for continued commitment, see § 41-21-83.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Patient's right to program of care and treatment designed to render further custody or institutionalization unnecessary, see § 41-21-102.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.

When chancery court commits party to insane hospital, it does not pass upon his right to discharge; that being question for hospital authorities. Hoye v. State, 169 Miss. 111, 152 So. 644, 1934 Miss. LEXIS 15 (Miss. 1934).

Showing on motion for new trial on ground one of jurors had formerly been adjudicated lunatic, it appearing that he was not given a certificate of sanity upon discharge, was held insufficient to require new trial, where counsel, because of knowledge of juror's mental trouble, was deemed to have waived such juror's lack of mental capacity. Ervin v. State, 168 Miss. 145, 151 So. 177, 1933 Miss. LEXIS 211 (Miss. 1933).

OPINIONS OF THE ATTORNEY GENERAL

There is no specific procedure outlined in Sections 41-21-61, et seq. regarding court orders to require committed patient to take medication; such a proceeding would be similar to procedures delineated in Sections 41-21-81 and 41-21-99 and burden to obtain order would be upon treatment facility, and not on local authorities in originating jurisdiction. 1994 Miss. Op. Att'y Gen. 68.

RESEARCH REFERENCES

ALR.

Validity, construction, application, and effect of Civil Rights of Institutionalized Persons Act, 42 USCS §§ 1997-1997j. 93 A.L.R. Fed. 706.

§ 41-21-82. Report prior to termination of initial commitment or discharge.

Prior to the termination of the initial commitment order, the director of the facility shall cause an impartial evaluation of the patient to be made in order to assess the extent to which the grounds for initial commitment persist, the patient continues to have mental illness, and alternatives to involuntary commitment are available. If the results of this impartial evaluation do not support the need for continued commitment, the patient shall be discharged.

The director shall file a written report with the committing court setting forth in detail the results of this evaluation and other facts indicating that the patient satisfies the statutory requirement for continued commitment and the findings of the examiner to support this conclusion. If, after reviewing the director's report, the court finds that the patient continues to have mental illness and that there is no alternative to involuntary commitment, the commitment may be continued.

Nothing in this section shall preclude the patient, his counsel or another person acting in his behalf from requesting a hearing under Section 41-21-81 or 41-21-99.

HISTORY:

Laws, 1984, ch. 477, § 11; Laws, 1985, ch. 454, § 4; Laws, 2010, ch. 476, § 63, eff from and after passage (approved Apr. 1, 2010).

Cross References —

Clerk of court to provide to Department of Public Safety certain information about persons determined to be individuals with mental illness or an intellectual disability under this chapter, see § 9-1-49.

Report of and certificate of physicians' or physician's and psychologist's, nurse practitioner's or physician assistant's initial examination in involuntary commitment proceedings, see § 41-21-69.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Patient's right to program of care and treatment designed to render further custody or institutionalization unnecessary, see § 41-21-102.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

OPINIONS OF THE ATTORNEY GENERAL

Patients who have been judicially committed to East Mississippi State Hospital, who are receiving treatment in a local hospital in accordance with § 41-21-77 may be discharged by the director of the facility in accordance with either this section or § 41-21-87. Neither of those statutes contemplates a hearing prior to discharge of the patient by the director. 2003 Miss. Op. Att'y Gen. 542.

The physician or local hospital director does not have the same authority with regard to a patient who is committed to East Mississippi State Hospital, or any other state institution, who is receiving treatment at a local hospital pending a bed at the state facility. In this situation, only the director of the facility to which the person was committed (the state facility) would have the authority to release or discharge a patient. 2003 Miss. Op. Att'y Gen. 542.

§ 41-21-83. Hearing on need for further treatment.

If a hearing is requested as provided in Section 41-21-74, 41-21-81 or 41-21-99, the court shall not make a determination of the need for continued commitment unless a hearing is held and the court finds by clear and convincing evidence that (a) the person continues to have mental illness or have an intellectual disability; and (b) involuntary commitment is necessary for the protection of the patient or others; and (c) there is no alternative to involuntary commitment. Hearings held under this section shall be held in the chancery court of the county where the facility is located; however, if the patient is confined at the Mississippi State Hospital at Whitfield, Mississippi, the hearing shall be conducted by the Chancery Court of the First Judicial District of Hinds County, Mississippi.

The hearing shall be held within fourteen (14) days after receipt by the court of the request for a hearing. The court may continue the hearing for good cause shown. The clerk shall ascertain whether the patient is represented by counsel, and, if the patient is not represented, shall notify the chancellor who shall appoint counsel for him if the chancellor determines that the patient for any reason does not have the services of an attorney; however, the patient may waive the appointment of counsel subject to the approval of the court. Notice of the time and place of the hearing shall be served at least seventy-two (72) hours before the time of the hearing upon the patient, his attorney, the director, and the person requesting the hearing, if other than the patient, and any witnesses requested by the patient or his attorney, or any witnesses the court may deem necessary or desirable.

The patient must be present at the hearing unless the chancellor determines that the patient is unable to attend and makes that determination and the reasons therefor part of the record.

The court shall put its findings and the reasons supporting its findings in writing and shall have copies delivered to the patient, his attorney, and the director of the treatment facility. An appeal from the final commitment order by either party may be had on the terms prescribed for appeals in civil cases; however, such appeal shall be without supersedeas. The record on appeal shall include the transcript of the commitment hearing.

HISTORY:

Laws, 1975, ch. 492, § 5(2-5); Laws, 1984, ch. 477, § 12; Laws, 1985, ch. 454, § 5; Laws, 1994, ch. 533, § 9; Laws, 1994, ch. 599, § 9; Laws, 2001, ch. 331, § 4; Laws, 2010, ch. 476, § 64, eff from and after passage (approved Apr. 1, 2010).

Cross References —

Clerk of court to provide to Department of Public Safety certain information about persons determined to be individuals with mental illness or an intellectual disability under this chapter, see § 9-1-49.

Appeals in cases of persons of unsound mind generally, see § 11-51-9.

Applicability of this section to costs incurred when person in need of mental treatment is represented by public defender, see § 25-32-9.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Report by director of mental health facility regarding patient prior to termination of initial involuntary commitment order or discharge, see § 41-21-82.

Costs of a hearing or appeal under this section, see § 41-21-85.

Right of patient to request hearing at least once a year, see § 41-21-99.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Patient's right to program of care and treatment designed to render further custody or institutionalization unnecessary, see § 41-21-102.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. Jurisdiction.

Plain and unambiguous language of Miss. Code Ann. § 41-21-83 applies broadly, directing that any hearing held pursuant to Miss. Code Ann. § 41-21-74 is to be heard by the Hinds County Chancery Court when the patient is confined at Whitfield; the statute in no way delineates that when a patient is confined at Whitfield, outpatient hearings under Miss. Code Ann. § 41-21-74(1)-(3) must be held in Hinds County, while hearings under § 41-21-74(4) must be held in the county where the public facility is located, despite the patient's confinement at Whitfield. Smith v. State, 229

So. 3d 178, 2017 Miss. App. LEXIS 137 (Miss. Ct. App. 2017).

OPINIONS OF THE ATTORNEY GENERAL

Pursuant to § 41-21-79, the cost of transportation of a mental patient should paid out of county funds and the responsibility of the county of the patient's residence; however, other costs of transportation as identified in this section should be the responsibility of the State Board of Mental Health. 2003 Miss. Op. Att'y Gen. 219.

The standard for finding a person to be mentally ill or mentally retarded under this section is different than finding someone incompetent to stand trial under URCCC 9.06. 2004 Miss. Op. Att'y Gen. 133.

RESEARCH REFERENCES

Am. Jur.

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 1 et seq. (initiation of proceedings to determine competency status).

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 61 et seq. (notice of hearing).

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 221 et seq. (release, discharge, or recommitment of incompetent).

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 151-154 (adjudication of status of competency).

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 161-163 (warrant-for commitment).

§ 41-21-85. Payment of costs of hearing on need for further treatment.

All costs of the hearing or appeal under Section 41-21-83, including, but not limited to, costs of all writs, notices, petitions, appeals, and attorney's fees and transportation of the patient to and from the place of the hearing shall be borne by the treatment facility in those instances where the patient is indigent, provided that if the patient is not indigent, all costs shall be taxed to the patient.

HISTORY:

Laws, 1975, ch. 492, § 5(6); Laws, 1984, ch. 477, § 13, eff from and after July 1, 1984.

Cross References —

Clerk of court to provide to Department of Public Safety certain information about persons determined to be individuals with mental illness or an intellectual disability under this chapter, see § 9-1-49.

Applicability of this section to costs incurred when person in need of mental treatment is represented by public defender, see § 25-32-9.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

RESEARCH REFERENCES

Am. Jur.

53 Am. Jur. 2d, Mentally Impaired Persons §§ 120 et seq.

§ 41-21-87. Discharge at behest of director of treatment facility.

(1) The director of either the treatment facility where the patient is committed or the treatment facility where the patient resides while awaiting admission to any other treatment facility may discharge any civilly committed

patient upon filing his certificate of discharge with the clerk of the committing court, certifying that the patient, in his judgment, no longer poses a substantial threat of physical harm to himself or others.

(2) A director of a treatment facility specified in subsection (1) above may return any patient to the custody of the committing court upon providing seven (7) days' notice and upon filing his certificate of same as follows:

(a) When, in the judgment of the director, the patient may be treated in a less restrictive environment; however, treatment in such less restrictive environment shall be implemented within seven (7) days after notification of the court; or

(b) When, in the judgment of the director, adequate facilities or treatment are not available at the treatment facility.

(3) Except as provided in Section 41-21-88, no committing court shall enjoin or restrain any director of a treatment facility specified in subsection (1) above from discharging a patient under this section whose treating professionals have determined that the patient meets one (1) of the criteria for discharge as outlined in subsection (1) or (2) of this section. The director of the treatment facility where the patient is committed may transfer any civilly committed patient from one (1) facility operated directly by the Department of Mental Health to another as necessary for the welfare of that or other patients. Upon receiving the director's certificate of transfer, the court shall enter an order accordingly.

(4) Within twenty-four (24) hours prior to the release or discharge of any civilly committed patient, other than a temporary pass due to sickness or death in the patient's family, the director shall give or cause to be given notice of such release or discharge to one (1) member of the patient's immediate family, provided the member of the patient's immediate family has signed the consent to release form provided under subsection (5) and has furnished in writing a current address and telephone number, if applicable, to the director for such purpose. The notice of release shall also be provided to any victim of such person and/or to any person to whom a restraining order has been entered to protect from such person. The notice to the family member shall include the psychiatric diagnosis of any chronic mental disorder incurred by the civilly committed patient and any medications provided or prescribed to the patient for such conditions.

(5) All providers of service in a treatment facility, whether in a community mental health/intellectual disability center, region or state psychiatric hospital, are authorized and directed to request a consent to release information from all patients which will allow that entity to involve the family in the patient's treatment. Such release form shall be developed by the Department of Mental Health and provided to all treatment facilities, community mental health/intellectual disability centers and state facilities. All such facilities shall request such a release of information upon the date of admission of the patient to the facility or at least by the time the patient is discharged.

(6) Each month the Department of Mental Health-operated facilities shall provide the directors of community mental health centers the names of all

individuals who were discharged to their catchment area with referral for community-based services. The department shall require community mental health care providers to report monthly the date that service(s) were initiated and type of service(s) initiated.

HISTORY:

Laws, 1975, ch. 492, § 6(1); Laws, 1984, ch. 477, § 14; Laws, 1997, ch. 587, § 4; Laws, 2001, ch. 331, § 5; Laws, 2004, ch. 547, § 2; Laws, 2010, ch. 440, § 3; Laws, 2010, ch. 476, § 65; Laws, 2011, ch. 501, § 6, eff from and after July 1, 2011.

Joint Legislative Committee Note —

Section 65 of ch. 476, Laws of 2010, effective upon passage (approved April 1, 2010), amended this section. Section 3 of ch. 440, Laws of 2010, effective upon passage (approved March 29, 2010), also amended this section. As set out above, this section reflects the language of Section 65 of ch. 476, Laws of 2010, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Notes —

Laws of 1997, ch. 587, § 1, provides as follows:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Mental Health Reform Act of 1997.' "

Laws of 2011, ch. 501, § 1, effective July 1, 2011, provides:

"SECTION 1. This act shall be known and may be cited as the 'Rose Isabel Williams Mental Health Reform Act of 2011.'"

Cross References —

Clerk of court to provide to Department of Public Safety certain information about persons determined to be individuals with mental illness or an intellectual disability under this chapter, see § 9-1-49.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Discharge of minor committed by youth court to State institution designed for special care to be made pursuant to this section, see § 43-21-611.

Procedure for restoration to reason and discharge of guardian of person for whom guardian has been appointed or who has been found in need of mental treatment, see § 93-13-151.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.

When chancery court commits party to insane hospital, it does not pass upon his right to discharge; that being question for hospital authorities. Hoye v. State, 169 Miss. 111, 152 So. 644, 1934 Miss. LEXIS 15 (Miss. 1934).

OPINIONS OF THE ATTORNEY GENERAL

The physician or local hospital director does not have the same authority with regard to a patient who is committed to East Mississippi State Hospital, or any other state institution, who is receiving treatment at a local hospital pending a bed at the state facility. In this situation, only the director of the facility to which the person was committed (the state facility) would have the authority to release or discharge a patient. 2003 Miss. Op. Att'y Gen. 542.

Patients who have been judicially committed to East Mississippi State Hospital, who are receiving treatment in a local hospital in accordance with § 41-21-77 may be discharged by the director of the facility in accordance with either § 41-21-82 or this section. Neither of those statutes contemplates a hearing prior to discharge of the patient by the director. 2003 Miss. Op. Att'y Gen. 542.

RESEARCH REFERENCES

ALR.

Immunity of public officer from liability for injuries caused by negligently released individual. 5 A.L.R.4th 773.

Governmental tort liability for injuries caused by negligently released individual. 6 A.L.R.4th 1155.

Propriety of transferring patient found not guilty by reason of insanity to less restrictive confinement. 43 A.L.R.5th 777.

Am. Jur.

53 Am. Jur. 2d, Mentally Impaired Persons §§ 60 et seq.

13 Am. Jur. Pl & Pr Forms (Rev), Habeas Corpus, Forms 161-164 (insane or mentally ill persons).

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 221 et seq. (release, discharge, or recommitment of incompetent).

§ 41-21-88. Release of individual acquitted on the ground of insanity and ordered confined to psychiatric hospital or institution; notice of release to be given to certain individuals.

A person committed pursuant to Section 99-13-7 shall not be released for any reason without order of the court having confined the person. Prior to release, the sheriff of the county where the offense was committed, the sheriff of the county of the committed person's destination and the crime victim or an immediate family member shall be notified of the release.

HISTORY:

Laws, 2010, ch. 440, § 2, eff from and after passage (approved Mar. 29, 2010.).

Cross References —

Clerk of court to provide to Department of Public Safety certain information about persons determined to be individuals with mental illness or an intellectual disability under this chapter, see § 9-1-49.

§ 41-21-89. Discharge at behest of patient, attorney, relative or guardian.

Nothing in Sections 41-21-61 through 41-21-107 shall preclude any patient, his attorney, or relative or guardian from seeking a patient's release from a treatment facility by application for writ of habeas corpus; provided that the application shall be made to the chancellor of the county in which the patient is hospitalized. Provided, further, that if the patient is hospitalized at the Mississippi State Hospital at Whitfield, Mississippi, the said application shall be made to a chancellor of the First Judicial District of Hinds County, Mississippi.

HISTORY:

Laws, 1975, ch. 492, § 6(2); Laws, 1984, ch. 477, § 15, eff from and after July 1, 1984.

Cross References —

Clerk of court to provide to Department of Public Safety certain information about persons determined to be individuals with mental illness or an intellectual disability under this chapter, see § 9-1-49.

Habeas corpus generally, see §§ 11-43-1 et seq.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Patient's right to program of care and treatment designed to render further custody or institutionalization unnecessary, see § 41-21-102.

Hearing on petition of voluntary admittee to Mississippi State Hospital at Whitfield to leave facility, see § 41-21-103.

Statutory provisions for commitment of persons in need of mental treatment not impairing validity of prior guardianships for persons of unsound mind, see § 93-13-128.

Procedure for restoration to reason and discharge of guardian of person for whom guardian has been appointed or who has been found in need of mental treatment, see § 93-13-151.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.

When chancery court commits party to insane hospital, it does not pass upon his right to discharge; that being question for hospital authorities. Hoye v. State, 169 Miss. 111, 152 So. 644, 1934 Miss. LEXIS 15 (Miss. 1934).

RESEARCH REFERENCES

Am. Jur.

53 Am. Jur. 2d, Mentally Impaired Persons §§ 60 et seq.

13 Am. Jur. Pl & Pr Forms (Rev), Habeas Corpus, Form 217 (writ of habeas corpus – directing officer executing writ to produce person detained by one not an officer – another form).

13 Am. Jur. Pl & Pr Forms (Rev), Habeas Corpus, Forms 161-164 (insane or mentally ill persons).

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 221 et seq. (release, discharge, or recommitment of incompetent).

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 261-287 (restoration to competency).

§ 41-21-91. Deportation of nonresidents.

The director of the treatment facility may transport any person who is now or may hereafter become a patient at a treatment facility and who is a legal resident of another state to the state of the residence of such patient, but only if arrangements to receive the patient have been made in the state to which he is to be returned.

HISTORY:

Laws, 1975, ch. 492, § 6(3); Laws, 1984, ch. 477, § 16, eff from and after July 1, 1984.

Cross References —

Clerk of court to provide to Department of Public Safety certain information about persons determined to be individuals with mental illness or an intellectual disability under this chapter, see § 9-1-49.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

§ 41-21-93. Warrant for patient absent without authorization.

If any such patient admitted or committed by a court to a treatment facility leaves without authorization, the director may immediately issue a warrant to any officer authorized to make arrests, commanding the arrest and return of said patient to the hospital from which he is departed.

HISTORY:

Laws, 1975, ch. 492, § 6(4); Laws, 1984, ch. 477, § 17, eff from and after July 1, 1984.

Cross References —

Clerk of court to provide to Department of Public Safety certain information about persons determined to be individuals with mental illness or an intellectual disability under this chapter, see § 9-1-49.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Hearing on petition of voluntary admittee to Mississippi State Hospital at Whitfield to leave facility, see § 41-21-103.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

RESEARCH REFERENCES

Am. Jur.

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 41-56 (apprehension and detention of alleged incompetent by warrant, writ, or court order).

§ 41-21-95. Payment of costs incurred in transporting discharged patients home or returning patients on unauthorized leave.

Costs of returning a patient who has left without authorization may be borne by the treatment facility from which the patient has been discharged or from which he has left without authorization.

HISTORY:

Laws, 1975, ch. 492, § 6(5); Laws, 1984, ch. 477, § 18, eff from and after July 1, 1984.

Cross References —

Clerk of court to provide to Department of Public Safety certain information about persons determined to be individuals with mental illness or an intellectual disability under this chapter, see § 9-1-49.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

§ 41-21-97. Confidentiality of hospital records and information; exceptions.

The hospital records of and information pertaining to patients at treatment facilities or patients being treated by physicians, psychologists (as defined in Section 73-31-3(e)), licensed master social workers or licensed professional counselors shall be confidential and shall be released only: (a) upon written authorization of the patient; (b) upon order of a court of competent jurisdiction; (c) when necessary for the continued treatment of a patient; (d) when, in the opinion of the director, release is necessary for the determination of eligibility for benefits, compliance with statutory reporting requirements, or other lawful purpose; or (e) when the patient has communicated to the treating physician, psychologist (as defined in Section 73-31-3(e)), master social worker or licensed professional counselor an actual threat of physical violence against a clearly identified or reasonably identifiable potential victim or victims, and then the treating physician, psychologist (as defined in Section 73-31-3(e)), master social worker or licensed professional counselor may communicate the threat only to the potential victim or victims, a law enforcement agency, or the parent or guardian of a minor who is identified as a potential victim.

HISTORY:

Laws, 1975, ch. 492, § 7(1); Laws, 1984, ch. 477, § 19; Laws, 1991, ch. 598 § 1; Laws, 2005, ch. 316, § 1; Laws, 2006, ch. 430, § 2, eff from and after July 1, 2006.

Cross References —

Clerk of court to provide to Department of Public Safety certain information about persons determined to be individuals with mental illness or an intellectual disability under this chapter, see § 9-1-49.

Regulation of hospital records generally, see §§ 41-9-1 et seq.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

Physician-patient privilege generally, see Rule 503, Miss. R. Evid.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Threats of violence.

1. In general.

Where an employee killed co-workers after being referred to counseling by the employer and an employee assistance provider (EAP), the EAP was not entitled to summary judgment as to negligence claims because counselors may have had a duty to protect third parties from the specific threat, and a factual question existed as to whether the EAP should have reasonably foreseen the deadly attack. Tanks v. NEAS, Inc., 519 F. Supp. 2d 645, 2007 U.S. Dist. LEXIS 70334 (S.D. Miss. 2007).

A psychiatrist did not owe a duty to members of a patient's family to warn them of the possibility that the patient might attempt to injure them where, at the time of the incident, § 41-21-97 precluded the release of confidential patient information except in enumerated instances, not including the possibility of harm to specific individuals. Evans v. United States, 883 F. Supp. 124, 1995 U.S. Dist. LEXIS 5123 (S.D. Miss. 1995).

2. Threats of violence.

Miss. Code Ann. § 41-21-97 creates an exception to the psychologist-patient privilege under Miss. Code Ann. § 73-31-29 where the patient makes threats of physical violence. Hearn v. State, 3 So. 3d 722, 2008 Miss. LEXIS 607 (Miss. 2008).

OPINIONS OF THE ATTORNEY GENERAL

Generally, most medical records in a mental commitment file in the office of the Chancery Clerk will fall under one or more of the exemptions to the Public Records Act; exempt records should not be released or kept open to the public absent a court order or authorized consent. 2002 Miss. Op. Att'y Gen. 543.

RESEARCH REFERENCES

ALR.

Liability of one treating mentally afflicted patient for failure to warn or protect third persons threatened by patient. 83 A.L.R.3d 1201.

Statute of limitations applicable to third person's action against psychiatrist, psychologist, or other mental health practitioner, based on failure to warn persons against whom patient expressed threats. 41 A.L.R.4th 1078.

§ 41-21-99. Continued care of patients.

The director shall obtain all the available facts relative to the illness of each patient admitted to said treatment facility. The director or a physician on the staff of said treatment facility shall, as often as practicable but not less frequently than every six (6) months, examine the patient and review the records as to the need for continued treatment of each patient and make the results of such examination a part of the patient's clinical record. The patient shall have the right to request a hearing at least annually, pursuant to Section 41-21-83. The patient shall be advised of his right to request a hearing and of his right to consult an attorney prior to his decision concerning whether or not to request such hearing, and the fact that the patient has been so advised shall be documented in the clinical record.

HISTORY:

Laws, 1975, ch. 492, § 7(2); Laws, 1984, ch. 477, § 20, eff from and after July 1, 1984.

Cross References —

Clerk of court to provide to Department of Public Safety certain information about persons determined to be individuals with mental illness or an intellectual disability under this chapter, see § 9-1-49.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Provisions for impartial evaluation of the patient prior to termination of the initial commitment order and court review of such evaluation, including provision that such evaluation shall not preclude a hearing request under this section, see § 41-21-82.

Need for hearing prior to determination of need for continued commitment, see § 41-21-83.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

OPINIONS OF THE ATTORNEY GENERAL

There is no specific procedure outlined in Sections 41-21-61, et seq. regarding court orders to require committed patient to take medication; such a proceeding would be similar to procedures delineated in Sections 41-21-81 and 41-21-99 and burden to obtain order would be upon treatment facility, and not on local authorities in originating jurisdiction. 1994 Miss. Op. Att'y Gen. 68.

§ 41-21-101. Admissions and commitments not adjudication of incompetency.

No admission or commitment to a treatment facility under Sections 41-21-61 through 41-21-107 or any finding of need for treatment, or any authorization of continued treatment under said sections (a) is an adjudication of legal incompetency, or (b), except as provided in Sections 45-9-101 and 45-9-103, deprives the person of his right to exercise his civil rights, including, but not limited to, civil service status, the right to vote, rights relating to the granting renewal, forfeiture or denial of a license, permit, privilege or benefit pursuant to any law, or the right to enter into contractual relationships and to manage his property; nor does an admission, hospitalization, finding or authorization of continued hospitalization create any presumption that the person is incompetent.

HISTORY:

Laws, 1975, ch. 492, § 7(3); Laws, 1984, ch. 477, § 21; Laws, 2013, ch. 384, § 4, eff from and after July 1, 2013.

Cross References —

Clerk of court to provide to Department of Public Safety certain information about persons determined to be individuals with mental illness or an intellectual disability under this chapter, see § 9-1-49.

Drug courts, see §§ 9-23-1 et seq.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Record statement of reasons for respondent's waiver of rights at involuntary commitment hearing, see § 41-21-76.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

RESEARCH REFERENCES

ALR.

Voting rights of persons mentally incapacitated. 80 A.L.R.3d 1116.

§ 41-21-102. Patients' rights.

(1) A patient has the right to be free from restraints. Restraints shall not be applied to a patient unless the director of the treatment facility or a member of the medical staff determines that they are necessary for the safety of the patient or others. Each use of a restraint and reason for such use shall be made part of the clinical record of the patient under the signature of the director of the treatment facility.

(2) A patient has the right to correspond freely without censorship. The director of the treatment facility may restrict receipt of correspondence if he determines that the medical welfare of the patient requires it. Any limitation imposed on the exercise of patient's correspondence rights and the reason for it shall be made a part of the clinical record of the patient. Any communication which is not delivered to a patient shall be immediately returned to the sender. No restriction shall be placed upon correspondence between a patient and his attorney or any court of competent jurisdiction.

(3) Subject to the general rules of the treatment facility, a patient has the right to receive visitors and make phone calls. The director of the treatment facility may restrict visits and phone calls if he determines that the medical welfare of the patient requires it. Any limitation imposed on the exercise of the patient's visitation and phone call rights and the reason for it shall be made a part of the clinical record of the patient. No restriction shall be placed upon a patient's visitation at the treatment facility with or upon calls to or from his attorney.

(4) A patient has the right to meet with or call his personal physician, spiritual advisor, and counsel at all reasonable times. The patient has the right to reasonable accommodation of religious practice.

(5) A patient has the right to periodic medical assessment. The director of a treatment facility shall have the physical and mental condition of every patient assessed as frequently as necessary, but not less often than every six (6) months.

(6) A person receiving services under Sections 41-21-61 through 41-21-107 has the right to receive proper care and treatment, best adapted, according to contemporary professional standards, to rendering further custody, institutionalization, or other services unnecessary. The treatment facility shall devise a written program plan for each person which describes in behavioral terms the case problems, the precise goals, and to modify the program plan as necessary. The program plan shall be reviewed with the patient.

(7) Unless disclosure is determined to be detrimental to the physical or mental health of the patient, and unless notation to that effect is made in the patient's record, a patient has the right of access to his medical records.

(8) A patient has the right to be represented by counsel at any proceeding under Sections 41-21-61 through 41-21-107. The court shall appoint counsel to represent the proposed patient if neither the proposed patient nor others provide counsel. In all proceedings under Section 41-21-61 through 41-21-107, counsel shall: (a) consult with the person prior to any hearing; (b) be given adequate time to prepare for all hearings; (c) continue to represent the person throughout any proceedings under this charge unless released as counsel by the court; and (d) be a vigorous advocate on behalf of his client.

(9) All persons admitted or committed to a treatment facility shall be notified in writing of their rights under Sections 41-21-61 through 41-21-107 at the time of admission.

HISTORY:

Laws, 1984, ch. 477, § 22, eff from and after July 1, 1984.

Cross References —

Clerk of court to provide to Department of Public Safety certain information about persons determined to be individuals with mental illness or an intellectual disability under this chapter, see § 9-1-49.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Record statement of reasons for respondent's waiver of rights at involuntary commitment hearing, see § 41-21-76.

Effect of commitment upon patients' exercise of their civil rights, see § 41-21-101.

Hearing on petition of voluntary admittee to Mississippi State Hospital at Whitfield to leave facility, see § 41-21-103.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. Liability.

Trial court erred by granting a residential drug and alcohol treatment facility summary judgment based on the wrongful conduct rule in a medical malpractice action, even though the deceased patient violated the law by possessing a controlled substance without a prescription, where the facility had a duty to safeguard him from controlled substances, the facility had a duty to use reasonable care to assess, monitor, and treat the patient after his first urine sample indicated the presence of the controlled substance, and the facility's owner kept the controlled substance in his unlocked desk drawer for several years and kept no inventories or records of dispensing the controlled substance in violation of state and federal laws, and it was foreseeable that the patient, who had sought treatment for abusing prescription drugs, would attempt to secure prescription drugs. Cahn v. COPAC, Inc., 198 So. 3d 347, 2015 Miss. App. LEXIS 644 (Miss. Ct. App. 2015), cert. denied, 202 So. 3d 613, 2016 Miss. LEXIS 361 (Miss. 2016), cert. denied, — So. 3d —, 2016 Miss. LEXIS 365 (Miss. 2016).

Department of mental health was found liable for negligence because a psychiatric hospital owed a duty of care to, inter alia, monitor the patient, and an injury during an escape was foreseeable; immunity under Miss. Code Ann. § 11-46-9(d) did not apply either because the duties owed were not discretionary based on Miss. Code Ann. § 41-21-102(6). Miss. Dep't of Mental Health v. Hall, 936 So. 2d 917, 2006 Miss. LEXIS 462 (Miss. 2006).

RESEARCH REFERENCES

ALR.

Construction and Application of State Patient Bill of Rights Statutes. 87 A.L.R.5th 277.

Right to relief under Federal Civil Rights Act of 1871 (42 USCS § 1983) for alleged wrongful commitment to or confinement in mental hospital. 16 A.L.R. Fed. 440.

Validity, construction, application, and effect of Civil Rights of Institutionalized Persons Act, 42 USCS §§ 1997-1997j. 93 A.L.R. Fed. 706.

Am. Jur.
53 Am. Jur. 2d, Mentally Impaired Persons
§§ 75, 85 et seq.

§ 41-21-103. Voluntary admissions for treatment.

(1) Unless he or she has a legal guardian or conservator, a married person or a person eighteen (18) years of age or older may be admitted to a treatment facility as a voluntary admittee for treatment, provided that the director deems the person suitable for admission, upon the filing of an application with the director, accompanied by certificates of two (2) physicians or by one (1) physician and one (1) psychologist, one (1) nurse practitioner or one (1) physician assistant who certify that they examined the person within the last five (5) days and that the person is in need of observation, diagnosis and treatment. The director may accept applications from the person seeking admission or any interested person with the applicant's written consent.

(2) A person with an intellectual disability who is under the age of eighteen (18) years and who is not married may be admitted to a treatment facility upon application of his or her parent or legal guardian if the following has occurred:

(a) An investigation by the director that carefully probes the person's social, psychological and developmental background; and

(b) A determination by the director that the person will benefit from care and treatment of his or her disorder at the facility and that services and facilities are available. The reasons for the determination shall be recorded in writing.

(3) A person with an intellectual disability or with mental illness who is married or eighteen (18) years of age or older and who has a legal guardian or conservator may be admitted to a treatment facility upon application of his or her legal guardian or conservator if authorization to make the application has been received from the court having jurisdiction of the guardianship or conservatorship and the following has occurred:

(a) An investigation by the director that carefully probes the person's social, psychological and developmental background; and

(b) A determination by the director that the person will benefit from care and treatment of his or her disorder at the facility and that services and facilities are available. The reasons for the determination shall be recorded in writing.

(4) A person with mental illness who is under the age of fourteen (14) years may be admitted to a treatment facility upon the application of his or her parent or legal guardian if the following has occurred:

(a) An investigation by the director that carefully probes the person's social, psychological and developmental background; and

(b) A determination by the director that the person will benefit from care and treatment of his or her disorder at the facility and that services and facilities are available. The reasons for the determination shall be recorded in writing.

(5) A person with mental illness who is fourteen (14) years of age or older but less than eighteen (18) years of age may be admitted to a treatment facility in the same manner as an adult may be involuntarily committed.

(6) Any voluntary admittee may leave a treatment facility after five (5) days, excluding Saturdays, Sundays and holidays, after he or she gives any member of the treatment facility staff written notice of his or her desire to leave, unless before leaving, the patient withdraws the notice by written withdrawal or unless within those five (5) days a petition and the certificates of two (2) examining physicians, or one (1) examining physician and one (1) psychologist, nurse practitioner or physician assistant, stating that the patient is in need of treatment, are filed with the chancery clerk in the county of the patient's residence or the county in which the treatment facility is located; however, if the admittee is at Mississippi State Hospital at Whitfield, the petition and certificate shall be filed with the chancery clerk in the county of patient's residence or with the Chancery Clerk for the First Judicial District of Hinds County, and the chancellor or clerk shall order a hearing under Sections 41-21-61 through 41-21-107. The patient may continue to be hospitalized pending a final order of the court in the court proceedings.

(7) The written application form for voluntary admission shall contain in large, bold-face type a statement in simple, nontechnical terms that the admittee may not leave for five (5) days, excluding Saturdays, Sundays and holidays, after giving written notice of his or her desire to leave. This right to leave must also be communicated orally to the admittee at the time of his or her admission, and a copy of the application form given to the admittee and to any parent, guardian, relative, attorney or friend who accompanied the patient to the treatment facility.

HISTORY:

Laws, 1975, ch. 492, § 8; Laws, 1978, ch. 399, § 1; Laws, 1984, ch. 477, § 23; Laws, 2008, ch. 513, § 6; Laws, 2010, ch. 476, § 66, eff from and after passage (approved Apr. 1, 2010).

Cross References —

Clerk of court to provide to Department of Public Safety certain information about persons determined to be individuals with mental illness or an intellectual disability under this chapter, see § 9-1-49.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

RESEARCH REFERENCES

Am. Jur.

9B Am. Jur. Legal Forms 2d, Incompetent Persons, § 141:11 (application by incompetent person for voluntary commitment).

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 14, 15 (petition or application – for involuntary judicial admission of mental incompetent – to hospital – for voluntary admission).

§ 41-21-105. Civil and criminal immunity.

(1) All persons acting in good faith in connection with the preparation or execution of applications, affidavits, certificates or other documents; apprehension; findings; determinations; opinions of physicians and psychologists; trans-

portation; examination; treatment; emergency treatment; detention or discharge of an individual, under the provisions of Sections 41-21-61 through 41-21-107, shall incur no liability, civil or criminal, for such acts.

(2) No civil suit of any kind whatsoever shall be brought or prosecuted against the board, any member thereof, any director or employee for acts committed within the scope of their employment, except for wilful or malicious acts or acts of gross negligence.

HISTORY:

Laws, 1975, ch. 492, § 9(1, 2); Laws, 1976, ch. 401, § 6, eff from and after July 1, 1976.

Cross References —

Clerk of court to provide to Department of Public Safety certain information about persons determined to be individuals with mental illness or an intellectual disability under this chapter, see § 9-1-49.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ P. 81.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Applicability.

1. In general.

This section immunizes good faith actions taken during the actual commitment process and speaks to wrongful commitment, unlawful detention, battery (based on non-consensual treatment), and the like; however, it does not immunize negligent custodial care. Carrington v. Methodist Med. Ctr., Inc., 740 So. 2d 827, 1999 Miss. LEXIS 170 (Miss. 1999).

Upon finding that children are in need of supervision, the Youth Court is vested by law with broad dispositional discretion, to be exercised in the best interest of the children, and the placement of children in a church operated children's home was within the court's authority. In Interest of M.R.L., 488 So. 2d 788, 1986 Miss. LEXIS 2461 (Miss. 1986).

2. Applicability.

Physician was entitled to the immunity provided under Miss. Code Ann. § 41-21-105(1) with respect to a patient's claims of negligence per se and medical negligence. The patient accused the physician of two negligence-based claims arising from his evaluation of her regarding her need for involuntary commitment for mental treatment; negligence was at the core of what the statute immunized. Tebo v. Tebo, 550 F.3d 492, 2008 U.S. App. LEXIS 25296 (5th Cir. Miss. 2008).

RESEARCH REFERENCES

ALR.

Civil liability for physical measures undertaken in connection with treatment of mentally disordered patient. 8 A.L.R.4th 464.

Reviewability before trial of order denying qualified immunity to defendant sued in state court under 42 USCS § 1983. 49 A.L.R.5th 717.

Right to relief under Federal Civil Rights Act of 1871 (42 USCS § 1983) for alleged wrongful commitment to or confinement in mental hospital. 16 A.L.R. Fed. 440.

Am. Jur.

28 Am. Jur. Proof of Facts 547, Confinement to Mental Institution, Proof No. 18 (proof of malice in attempt to have person committed).

§ 41-21-107. Criminal offenses.

Any person who conspires unlawfully to cause, or unlawfully causes, any person to be adjudicated in need of treatment or as incompetent or to be detained at, or admitted to, or hospitalized in a treatment facility, or any person who receives or detains any person in need of treatment, contrary to

Sections 41-21-61 through 41-21-107, or any person who maltreats any person in need of treatment, or any person who knowingly aids, abets or assists and encourages any person in need of treatment, to be absent without permission from any treatment facility or custodian in which or by whom such person is lawfully detained, or any person who violates any provision contained in Sections 41-21-61 through 41-21-107 shall be guilty of a misdemeanor and upon conviction be fined not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00), or imprisoned in the county jail not exceeding one (1) year, or both.

HISTORY:

Laws, 1975, ch. 492, § 9(3); Laws, 1984, ch. 477, § 24, eff from and after July 1, 1984.

Cross References —

Clerk of court to provide to Department of Public Safety certain information about persons determined to be individuals with mental illness or an intellectual disability under this chapter, see § 9-1-49.

For a similar provision applying to South Mississippi Retardation Center, see § 41-19-155.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Criminal offense of sending sane person to insane asylum, see § 97-3-13.

Crime of false confinement of sane person in insane asylum, see § 97-3-13.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

RESEARCH REFERENCES

ALR.

Liability for malicious prosecution predicated upon institution of, or conduct in connection with, insanity proceedings. 30 A.L.R.3d 455.

Liability for false imprisonment predicated upon institution of, or conduct in connection with, insanity proceedings. 30 A.L.R.3d 523.

Right to relief under Federal Civil Rights Act of 1871 (42 USCS § 1983) for alleged wrongful commitment to or confinement in mental hospital. 16 A.L.R. Fed. 440.

Am. Jur.

25 Am. Jur. Proof of Facts 3d 117, Proof of Psychotherapist's Negligence in Diagnosing and Treating a Patient's Mental Condition.

§ 41-21-109. Rehabilitation facilities for adolescents with mental illness or with an intellectual disability; establishment.

(1) The purpose of this section is to provide modern and efficient rehabilitation facilities for adolescents with mental illness or with an intellectual disability who have been committed for treatment by a court of competent jurisdiction under Section 41-21-61 et seq.

(2) The Department of Finance and Administration, acting through the Bureau of Building, Grounds and Real Property Management, using funds from bonds, monies appropriated by the Legislature for those purposes, federal matching or other federal funds, federal grants or other available funds from whatever source, shall provide for by construction, lease, lease-purchase or otherwise and equip the following juvenile rehabilitation facilities under the jurisdiction and responsibility of the Mississippi Department of Mental Health: Construction and equipping of two (2) separate facilities each of which could serve up to fifty (50) adolescents, and each of which will be located at

sites approved by the Department of Mental Health that would be specifically designed to serve adolescents who meet commitment criteria as defined by Section 41-21-61. One (1) fifty-bed facility shall house adolescent offenders with mental illness, and the other facility shall house adolescent offenders with an intellectual disability. Priority admission to these facilities shall be those adolescents who have some involvement in the judicial system. These facilities shall be self-contained and offer a secure but therapeutic environment allowing persons to be habilitated apart from persons who are more vulnerable and who have disabilities that are more disabling. The number of persons admitted to these facilities shall not exceed the number of beds authorized under this section or the number of beds licensed or authorized by the licensure and certification agency, whichever is less.

Those facilities shall be on property owned by the Department of Mental Health, or its successor, at one or more sites selected by the Department of Mental Health on land that is either donated to the state or purchased by the state specifically for the location of those facilities.

(3) The facility located in Harrison County shall be known as the Specialized Treatment Facility for the Emotionally Disturbed, and the facility located in Brookhaven shall be known as the Mississippi Adolescent Center.

HISTORY:

Laws, 1995, ch. 528, § 1; Laws, 2009, ch. 563, § 12; Laws, 2010, ch. 476, § 67, eff from and after passage (approved Apr. 1, 2010.).

Cross References —

Clerk of court to provide to Department of Public Safety certain information about persons determined to be individuals with mental illness or an intellectual disability under this chapter, see § 9-1-49.

CRISIS INTERVENTION TEAMS

Sec.	
41-21-131.	Definitions.
41-21-133.	Establishment of Crisis Intervention Teams.
41-21-135.	Oversight of Crisis Intervention Teams by community mental health centers; collaborative agreements among community health center, law enforcement agency and hospital that will serve as single point of entry.
41-21-137.	Internal operation of single point of entry; appointment of medical director to oversee operation of hospital-based service.
41-21-139.	Determination of need to take person into custody to transport to single point of entry; immunity for persons acting in good faith in connection with detention of certain persons.
41-21-141.	Implementation of comprehensive psychiatric emergency service; licensure for number of extended observation beds required; final disposition required within 72 hours.
41-21-143.	Active encouragement of hospitals and law enforcement agencies to develop Crisis Intervention Teams and comprehensive psychiatric emergency services.

§ 41-21-131. Definitions.

As used in Sections 41-21-131 through 41-21-143, the following terms shall have the meanings as defined in this section:

(a) "Crisis Intervention Team" means a community partnership among a law enforcement agency, a community mental health center, a hospital, other mental health providers, consumers and family members of consumers.

(b) "Participating partner" means a law enforcement agency, a community mental health center or a hospital that has each entered into collaborative agreements needed to implement a Crisis Intervention Team.

(c) "Catchment area" means a geographical area in which a Crisis Intervention Team operates and is defined by the jurisdictional boundaries of the law enforcement agency that is the participating partner.

(d) "Crisis Intervention Team officer" or "CIT officer" means a law enforcement officer who is authorized to make arrests under Section 99-3-1 and who is trained and certified in crisis intervention and who is working for a law enforcement agency that is a participating partner in a Crisis Intervention Team.

(e) "Substantial likelihood of bodily harm" means that:

(i) The person has threatened or attempted suicide or to inflict serious bodily harm to himself; or

(ii) The person has threatened or attempted homicide or other violent behavior; or

(iii) The person has placed others in reasonable fear of violent behavior and serious physical harm to them; or

(iv) The person is unable to avoid severe impairment or injury from specific risks; and

(v) There is substantial likelihood that serious harm will occur unless the person is placed under emergency treatment.

(f) "Single point of entry" means a specific hospital that is the participating partner in a Crisis Intervention Team and that has agreed to provide psychiatric emergency services and triage and referral services.

(g) "Psychiatric emergency services" means services designed to reduce the acute psychiatric symptoms of a person who is mentally ill or a person who has an impairment caused by drugs or alcohol and, when possible, to stabilize that person so that continuing treatment can be provided in the local community.

(h) "Triage and referral services" means services designed to provide evaluation of a person with mental illness or a person who has an impairment caused by drugs or alcohol in order to direct that person to a mental health facility or other mental health provider that can provide appropriate treatment.

(i) "Comprehensive psychiatric emergency service" means a specialized psychiatric service operated by the single point of entry and located in or near the hospital emergency department that can provide psychiatric emergency services for a period of time greater than can be provided in the hospital emergency department.

(j) "Extended observation bed" means a hospital bed that is used by a comprehensive psychiatric emergency service and is licensed by the State Department of Health for that purpose.

(k) "Psychiatric nurse practitioner" means a registered nurse who has completed the educational requirements specified by the State Board of

Nursing, has successfully passed either the adult or family psychiatric nurse practitioner examination and is licensed by the State Board of Nursing to work under the supervision of a physician at a single point of entry following protocols approved by the State Board of Nursing.

(*l*) "Psychiatric physician assistant" means a physician assistant who has completed the educational requirements and passed the certification examination as specified in Section 73-26-3, is licensed by the State Board of Medical Licensure, has had at least one (1) year of practice as a physician assistant employed by a community mental health center, and is working under the supervision of a physician at a single point of entry.

HISTORY:
Laws, 2010, ch. 548, § 4, eff from and after July 1, 2010.

§ 41-21-133. Establishment of Crisis Intervention Teams.

(1) Any law enforcement agency or community mental health center, as a participating partner, is authorized to establish Crisis Intervention Teams to provide for psychiatric emergency services and triage and referral services for persons who are with substantial likelihood of bodily harm as a more humane alternative to confinement in a jail.

(2) A Crisis Intervention Team shall have one or more designated hospitals within the specified catchment area that has agreed to serve as a single point of entry and to provide psychiatric emergency services, triage and referral services and other appropriate medical services for persons in custody of a CIT officer or referred by the community mental health center within the specified catchment area.

(3) Any hospital, as a participating partner and serving as a single point of entry, is authorized to establish a comprehensive psychiatric emergency service to provide psychiatric emergency services to a person with mental illness or an impairment caused by drugs or alcohol for a period of time greater than allowed in a hospital emergency department when, in the opinion of the treating physician, psychiatric nurse practitioner or psychiatric physician assistant, that person likely can be stabilized within seventy-two (72) hours so that continuing treatment can be provided in the local community rather than a crisis intervention center or state psychiatric hospital.

(4) Two (2) or more governmental entities may jointly provide Crisis Intervention Teams and comprehensive psychiatric emergency services authorized under Sections 41-21-131 through 41-21-143. For the purpose of addressing unique rural service delivery needs and conditions, the State Department of Mental Health may authorize two (2) or more community mental health centers to collaborate in the development of Crisis Intervention Teams and comprehensive psychiatric emergency services and will facilitate the development of those programs.

HISTORY:

Laws, 2010, ch. 548, § 5, eff from and after July 1, 2010.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the code section number assigned to this section by Section 5 of Chapter 548, Laws of 2010, by changing "41-61-133" to "41-21-133." In addition, an error in a statutory reference in the first sentence of (4) was corrected by substituting "Sections 41-21-131 through 41-21-143" for "Sections 41-61-131 through 41-61-143." The Joint Committee ratified these corrections at its July 22, 2010, meeting.

§ 41-21-135. Oversight of Crisis Intervention Teams by community mental health centers; collaborative agreements among community health center, law enforcement agency and hospital that will serve as single point of entry.

(1) Community mental health centers shall have oversight of Crisis Intervention Teams operating within their service areas. Proposals for Crisis Intervention Teams shall include the necessary collaborative agreements among the community mental health center, a law enforcement agency and a hospital that will serve as the single point of entry for the Crisis Intervention Team catchment area.

(2) The collaborative agreements shall specify that the hospital acting as the single point of entry shall accept all persons who are in custody of a CIT officer operating within the catchment area, when custody has been taken because of substantial likelihood of bodily harm, and shall accept all persons with mental illness and persons with impairment caused by drugs or alcohol who are referred by the community mental health center serving the catchment area, when a qualified staff member of the community mental health center has evaluated the person and determined that the person needs acute psychiatric emergency services that are beyond the capability of the community mental health center.

(3) The director of the community mental health center shall determine if all collaborative agreements address the needs of the proposed Crisis Intervention Team, including generally accepted standards of law enforcement training, before authorizing operation of the plan. Those generally accepted standards for law enforcement training shall be verified by the State Department of Mental Health.

(4) If the director of the community mental health center has reason to believe that an authorized Crisis Intervention Team is not operating in accordance with the collaborative agreements and within general acceptable guidelines and standards, the director has the authority to review the operation of the Crisis Intervention Team and, if necessary, suspend operation until corrective measures are taken.

(5) The director of the community mental health center shall establish a process by which complaints from the public regarding the operation of a Crisis Intervention Team may be evaluated and addressed and provide for the inclusion of consumer representatives in that process.

HISTORY:
Laws, 2010, ch. 548, § 6, eff from and after July 1, 2010.

Joint Legislative Committee Note —
Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the code section number assigned to this section by Section 6 of Chapter 548, Laws of 2010, by changing "41-61-135" to "41-21-135." The Joint Committee ratified the correction at its July 22, 2010, meeting.

§ 41-21-137. Internal operation of single point of entry; appointment of medical director to oversee operation of hospital-based service.

(1) The internal operation of a single point of entry shall be governed by the administration of the hospital and regulated by the State Department of Health, the Joint Commission on Accreditation of Healthcare Organizations and other state and federal agencies that have regulatory authority over hospitals. All collaborative agreements must be in compliance with these governing authorities.

(2) A hospital operating as a single point of entry for a Crisis Intervention Team shall appoint a medical director to oversee the operation of the hospital-based service. The medical director will assure that the services provided are within the guidelines established by the collaborative agreements.

(3) Notwithstanding any other provision of law, nothing in Sections 41-21-131 through 41-21-143 shall be interpreted to create an entitlement for any individual to receive psychiatric emergency services at a single point of entry.

HISTORY:
Laws, 2010, ch. 548, § 7, eff from and after July 1, 2010.

Joint Legislative Committee Note —
Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the code section number assigned to this section by Section 7 of Chapter 548, Laws of 2010, by changing "41-61-137" to "41-21-137." In addition, an error in a statutory reference in (3) was corrected by substituting "Sections 41-21-131 through 41-21-143" for "Sections 41-61-131 through 41-61-143." The Joint Committee ratified these corrections at its July 22, 2010, meeting.

§ 41-21-139. Determination of need to take person into custody to transport to single point of entry; immunity for persons acting in good faith in connection with detention of certain persons.

(1) If a CIT officer determines that a person is with substantial likelihood of bodily harm, that officer may take the person into custody for the purpose of transporting the person to the designated single point of entry serving the catchment area in which the officer works. The CIT officer shall certify in writing the reasons for taking the person into custody.

(2) A CIT officer shall have no further legal responsibility or other obligations once a person taken into custody has been transported and received at the single point of entry.

(3) A CIT officer acting in good faith in connection with the detention of a

person believed to be with substantial likelihood of bodily harm shall incur no liability, civil or criminal, for those acts.

(4) Only CIT officers authorized to operate within a catchment area may bring persons in custody to the single point of entry for that catchment area. Law enforcement officers working outside the designated catchment area are not authorized to transport any person into the catchment area for the purpose of bringing that person to the single point of entry.

(5) Any person transported by a CIT officer to the single point of entry or any person referred by the community mental health center following guidelines of the collaborative agreements shall be examined by a physician, psychiatric nurse practitioner or psychiatric physician assistant. If the person does not consent to voluntary evaluation and treatment, and the examiner determines that the person is a mentally ill person, as defined in Section 41-21-61(e), the examiner shall then determine if that person can be held under the provisions of Section 41-21-67(5). All other provisions of Section 41-21-67(5) shall apply and be extended to include licensed psychiatric nurse practitioners and psychiatric physician assistants employed by the single point of entry, including protection from liability, as provided in this section, when acting in good faith. If the examiner determines that the person is with substantial likelihood of bodily harm because of impairment caused by drugs or alcohol and determines that there is no reasonable, less-restrictive alternative, the person may be held at the single point of entry until the impairment has resolved and the person is no longer with substantial likelihood of bodily harm. Persons acting in good faith in connection with the detention of a person with impairment caused by drugs or alcohol shall incur no liability, civil or criminal, for those acts.

HISTORY:

Laws, 2010, ch. 548, § 8, eff from and after July 1, 2010.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the code section number assigned to this section by Section 8 of Chapter 548, Laws of 2010, by changing "41-61-139" to "41-21-139." The Joint Committee ratified the correction at its July 22, 2010, meeting.

§ 41-21-141. Implementation of comprehensive psychiatric emergency service; licensure for number of extended observation beds required; final disposition required within 72 hours.

(1) To implement a comprehensive psychiatric emergency service, a single point of entry must request licensure from the State Department of Health for the number of extended observation beds that are required to adequately serve the designated catchment area. A license for the requested beds must be obtained before beginning operation.

(2) If the State Department of Health determines that a comprehensive psychiatric emergency service can provide for the privacy and safety of all patients receiving services in the hospital, the department may approve the location of one or more of the extended observation beds within another area of the hospital rather than in proximity to the emergency department.

(3) Each comprehensive psychiatric emergency service shall provide or contract to provide qualified physicians, psychiatric nurse practitioners, psychiatric physician assistants and ancillary personnel necessary to provide services twenty-four (24) hours per day, seven (7) days per week.

(4) A comprehensive psychiatric emergency service shall have at least one (1) physician, psychiatric nurse practitioner or psychiatric physician assistant, who is a member of the staff of the hospital, on duty and available at all times. However, the medical director of the service may waive this requirement if provisions are made for a physician in the emergency department to assume responsibility and provide initial evaluation and treatment of a person in custody of a CIT officer or referred by the community mental health center and provisions are made for the physician, psychiatric nurse practitioner or psychiatric physician assistant on call for the comprehensive psychiatric emergency service to evaluate the person onsite within thirty (30) minutes of notification that the person has arrived.

(5) Any person admitted to a comprehensive psychiatric emergency service must have a final disposition within a maximum of seventy-two (72) hours. If a person cannot be stabilized within seventy-two (72) hours, that person shall be transferred from an extended observation bed to a more appropriate inpatient unit.

HISTORY:

Laws, 2010, ch. 548, § 9, eff from and after July 1, 2010.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the code section number assigned to this section by Section 9 of Chapter 548, Laws of 2010, by changing "41-61-141" to "41-21-141." The Joint Committee ratified the correction at its July 22, 2010, meeting.

§ 41-21-143. Active encouragement of hospitals and law enforcement agencies to develop Crisis Intervention Teams and comprehensive psychiatric emergency services.

(1) Community mental health center directors shall actively encourage hospitals to develop comprehensive psychiatric emergency services. If a collaborative agreement can be negotiated with a hospital that can provide a comprehensive psychiatric emergency service, that hospital shall be given priority when designating the single point of entry.

(2) The State Department of Mental Health shall encourage community mental health center directors to actively work with hospitals and law enforcement agencies to develop Crisis Intervention Teams and comprehensive psychiatric emergency services and shall facilitate the development of those programs.

(3) State colleges and universities that provide classes in criminal justice are encouraged to collaborate with law enforcement agencies to develop training guidelines and standards for CIT officers and to provide educational classes and continuing education programs by which CIT officers can earn continuing education credits.

HISTORY:
Laws, 2010, ch. 548, § 10, eff from and after July 1, 2010.

Joint Legislative Committee Note —
Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the code section number assigned to this section by Section 10 of Chapter 548, Laws of 2010, by changing "41-61-143" to "41-21-143." The Joint Committee ratified the correction at its July 22, 2010, meeting.

CRISIS INTERVENTION MENTAL HEALTH FUND

Sec.
41-21-151. Crisis Intervention Mental Health Fund created; purpose; distribution of monies from fund; fund to be a continuing fund; components of fund.

§ 41-21-151. Crisis Intervention Mental Health Fund created; purpose; distribution of monies from fund; fund to be a continuing fund; components of fund.

There is created in the State Treasury a special interest-bearing fund to be known as the Crisis Intervention Mental Health Fund. The purpose of the fund shall be to provide funding for the seven (7) mental health crisis centers in the state and the Special Treatment Facility located in Harrison County. Monies from the fund derived from assessments under Section 99-19-73 shall be administered and distributed by the State Treasurer upon warrants issued by the Department of Mental Health. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of: (a) monies appropriated by the Legislature for the purposes of funding mental health crisis centers and the Special Treatment Facility; (b) the interest accruing to the fund; (c) monies received under the provisions of Section 99-19-73; (d) monies received from the federal government; and (e) monies received from such other sources as may be provided by law.

HISTORY:
Laws, 2004, ch. 543, § 2, eff from and after July 1, 2004.

SCREENING, TESTING, AND INVESTIGATION BY STATE BOARD OF HEALTH

Sec.
41-21-201. Newborn screening program.
41-21-203. Testing of newborn children for certain conditions.
41-21-205. Creation of Birth Defects Registry.

§ 41-21-201. Newborn screening program.

(1) The State Department of Health shall establish, maintain and carry out a comprehensive newborn screening program designed to detect hypothyroidism, phenylketonuria (PKU), hemoglobinopathy, congenital adrenal hyperplasia (CAH), galactosemia, and such other conditions as specified by the State Board of Health and as recommended by the American Academy of Pediatrics.

The State Board of Health shall adopt any rules and regulations necessary to accomplish the program.

(2) The State Board of Health shall determine and specify the conditions that will be included in the comprehensive newborn screening program in addition to those conditions named in subsection (1) of this section, upon the advice and recommendations of a genetics advisory committee and in accordance with the recommendations of the American Academy of Pediatrics. The advisory committee shall be appointed by the Executive Director of the State Department of Health, and shall include at least two (2) pediatricians and one (1) consumer representative from a family that has experience with a newborn infant with an abnormal screening test. The State Department of Health shall maintain a list of each of the conditions included in the comprehensive newborn screening program, which shall be made available to physicians and other health-care providers who are required to provide for newborn screening testing under Section 41-21-203.

(3) The State Department of Health shall develop information materials about newborn screening tests that are available, which may be used by physicians and other health-care providers to inform pregnant women and parents.

HISTORY:

Laws, 1979, ch. 388, § 1; Laws, 1984, ch. 416, § 1; reenacted, Laws, 1987, ch. 382, § 1; Laws, 1988, ch. 572, § 1; Laws, 2001, ch. 340, § 1; Laws, 2001, ch. 575, § 2; Laws, 2002, ch. 574, § 2, eff from and after Oct. 1, 2002.

Joint Legislative Committee Note —

Section 1 of ch. 340, Laws of 2001, effective from and after July 1, 2001 (approved March 11, 2001), amended this section. Section 2 of ch. 575, Laws of 2001, effective from and after July 1, 2001 (approved April 7, 2001) also amended this section. As set out above, this section reflects the language of Section 2 of ch. 575, Laws of 2001, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the sections are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Notes —

Laws of 2002, ch. 574, § 1, provides as follows:

"SECTION 1. This act shall be known and may be cited as the 'Ben Haygood Comprehensive Newborn Screening Program.' "

§ 41-21-203. Testing of newborn children for certain conditions.

(1) All newborn infants shall be screened by the physician or other health-care provider attending the infant, using tests that have been approved by the State Board of Health, to detect those conditions listed in Section 41-21-201 and the other conditions specified by the State Board of Health for the comprehensive newborn screening program. However, no such tests shall be given to any child whose parents object thereto on the grounds that the test conflicts with his religious practices or tenets. The tests provided under the comprehensive newborn screening program shall be evaluated in laboratories located in the United States. The State Department of Health shall follow up all positive tests with the attending physician or other health-care provider who notified the department thereof, and with the parents of the newborn child. The services and facilities of the State Department of Health and those of other state boards, departments and agencies cooperating with the State

Department of Health in carrying out the comprehensive newborn screening program shall be made available to all newborn infants with abnormal screening tests.

(2) The State Department of Health shall provide ongoing epidemiologic surveillance of the comprehensive newborn screening program to determine the efficacy and cost effectiveness of screening newborn infants.

HISTORY:

Laws, 1979, ch. 388, § 2; Laws, 1984, ch. 416, § 2; reenacted, Laws, 1987, ch. 382, § 2; Laws, 1988, ch. 572, § 2; Laws, 2001, ch. 575, § 1; Laws, 2002, ch. 574, § 3; Laws, 2006, ch. 516, § 19; Laws, 2008, ch. 355, § 2, eff from and after passage (approved Mar. 26, 2008).

Editor's Notes —

Laws of 2002, ch. 574, § 1, provides as follows:

"SECTION 1. This act shall be known and may be cited as the 'Ben Haygood Comprehensive Newborn Screening Program.' "

§ 41-21-205. Creation of Birth Defects Registry.

(1) The State Board of Health shall establish in the State Department of Health a program to:

(a) Identify and investigate birth defects; and

(b) Maintain a central registry of cases of birth defects.

(2) The department shall design the registry program so that it will:

(a) Provide information to identify risk factors and causes of birth defects;

(b) Provide information on other possible causes of birth defects;

(c) Provide for the development of strategies to prevent birth defects;

(d) Provide for interview studies about the causes of birth defects; and

(e) Provide for the collection of birth defect information.

(3) The board shall adopt rules, regulations and procedures to govern the operation of the registry program and to carry out the intent of this section.

(4) The board in its rules and regulations shall specify the types of information to be provided to the birth defects registry and the persons and entities who are required to provide such information to the birth defects registry.

(5) The board by rule shall prescribe the manner in which records and other information are made available to the department.

(6) The department may obtain records and/or test results of individuals not reported or observed to have a birth defect reported to the department at a later date.

(7) The following persons who act in compliance with this section are not civilly or criminally liable for furnishing the information required under this section:

(a) A hospital, clinical laboratory, genetic treatment center or other health-care facility;

(b) An administrator, officer or employee of a hospital, clinical laboratory, genetic treatment center or other health-care facility; and

(c) A physician or employee of a physician.

(8) Information collected and analyzed by the department under this

section shall be placed in a central registry to facilitate research and to maintain security.

(a) Data obtained under this section directly from the medical records of a patient is for the confidential use of the department and the persons or public or private entities that the department determines are necessary to carry out the intent of this section. The data is privileged and may not be divulged or made public in a manner that discloses the identity of an individual whose medical records have been used for obtaining data under this section.

(b) Information that may identify an individual whose medical records have been used for obtaining data under this section is not available for public inspection under the Mississippi Public Records Act of 1983.

(c) Statistical information collected under this section is public information.

(9) The department may use the registry to:

(a) Investigate the causes of birth defects and other health conditions as authorized by statute;

(b) Design and evaluate measures to prevent the occurrence of birth defects, and other conditions; and

(c) Conduct other investigations and activities necessary for the board and the department to fulfill their obligation to protect the public health.

(10) Any person or entity who misuses the information provided to the registry shall be subject to a civil penalty of Five Hundred Dollars ($500.00) for each such failure or misuse. Such penalty shall be assessed and levied by the board after a hearing, and all such penalties collected shall be deposited into the State General Fund.

(11) The State Health Officer may appoint or delegate his authority for the purposes of this section to an advisory committee, not to exceed ten (10) persons, to assist in the design and implementation of this central registry with representation from relevant groups including, but not limited to, hospitals, physicians, board-certified clinical geneticists, personnel of the department, personnel of other appropriate state agencies, disabled persons (resulting from a birth defect) and parents of disabled children (resulting from a birth defect). If a central registry advisory committee is created by the State Health Officer, the board shall consult and be advised by the committee on the promulgation of rules, regulations and procedures for the purposes of this section.

HISTORY:

Laws, 1997, ch. 463, § 1, eff from and after July 1, 1997.

Cross References —

Mississippi Public Records Act of 1983, see §§ 25-61-1 et seq.

Hospital records, generally, see §§ 41-9-67 et seq.

Prohibition against involuntary commitment of persons whose primary problems are physical disability associated with infant birth defects, see § 41-21-73.

CHAPTER 22.

HEMOPHILIA

Sec.	
41-22-1.	Definitions.
41-22-3.	Program for care and treatment of sufferers.
41-22-5.	Authority of state board of health.

§ 41-22-1. Definitions.

The words and terms as used in this chapter have the following meanings:

(1) "State health officer" shall mean the state health officer of the state board of health, or his designated representative.

(2) "Board" shall mean the state board of health.

(3) "Hemophilia" shall mean a bleeding tendency resulting from a genetically determined deficiency factor in the blood.

HISTORY:

Laws, 1974, ch. 340, § 1, eff from and after passage (approved March 14, 1974).

RESEARCH REFERENCES

ALR.

Physician's or surgeon's malpractice in connection with care and treatment of hemophiliac or diagnosis of hemophilia. 1 A.L.R.3d 1107.

§ 41-22-3. Program for care and treatment of sufferers.

The State Board of Health is authorized to establish a program for the care and treatment of persons suffering from hemophilia. The program shall assist persons who require continuing treatment with blood and blood derivatives to avoid crippling, extensive hospitalization and other effects associated with this bleeding condition, but who are unable to pay for the entire cost of such services on a continuing basis despite the existence of various types of hospital and medical insurance.

HISTORY:

Laws, 1974, ch. 340, § 2, eff from and after passage (approved March 12, 1974).

RESEARCH REFERENCES

ALR.

Physician's or surgeon's malpractice in connection with care and treatment of hemophiliac or diagnosis of hemophilia. 1 A.L.R.3d 1107.

Malpractice: Physician's liability for injury or death resulting from side effects of drugs intentionally administered to or prescribed for patient. 47 A.L.R.5th 433.

§ 41-22-5. Authority of state board of health.

The board is authorized to:

(1) Develop standards for determining eligibility for care and treatment under this program;

(2) Assist in the development and expansion of programs for the care and treatment of persons suffering from hemophilia, including self-administration, prevention and home care and other medical and dental procedures and techniques designed to provide maximum control over bleeding episodes typical of this condition;

(3) Extend financial assistance in order to provide diagnosis of and treatment for persons suffering from hemophilia and other related hemorrhagic disorders in obtaining blood, blood derivatives and concentrates and any other such necessary medical, surgical, dental, hospital, outpatient clinic service, rehabilitation or may participate in the cost of blood processing to the extent that such support will facilitate the supplying of blood, blood derivatives and concentrates and other efficacious agents to patients with hemorrhagic disorders.

(4) Employ all necessary administrative personnel as may be provided in its budget to carry out the provisions of this chapter; and

(5) Promulgate all rules and regulations necessary to effectuate the purposes of this chapter.

HISTORY:

Laws, 1974, ch. 340, § 3, eff from and after passage (approved March 14, 1974).

RESEARCH REFERENCES

ALR.

Physician's or surgeon's malpractice in connection with care and treatment of hemophiliac or diagnosis of hemophilia. 1 A.L.R.3d 1107.

CHAPTER 23.

CONTAGIOUS AND INFECTIOUS DISEASES; QUARANTINE

In General. 41-23-1
Rubella Screening, Counseling and Vaccination. 41-23-101
School-located Influenza Vaccination Programs. 41-23-121

IN GENERAL

Sec.
41-23-1. Rules and regulations; physicians, health-care facilities, and correctional facilities to report cases of communicable and other dangerous diseases; penalties.
41-23-2. Penalties for violating health department orders with respect to life-threatening communicable diseases.
41-23-3. Repealed.
41-23-5. Authority of State Department of Health to investigate diseases; authority to temporarily detain individuals for disease control purposes under certain circumstances.
41-23-7 through 41-23-11. Repealed.
41-23-13. Suppression of nuisances injurious to public health.
41-23-15 through 41-23-25. Repealed.
41-23-27. Powers of State Board of Health as to persons afflicted with infectious sexually transmitted disease.
41-23-29. Inspection and examination of person suspected of being afflicted with infectious sexually transmitted disease.
41-23-30. Confidential testing for and treatment of sexually transmitted disease.
41-23-31. Donations to state board of health.
41-23-33. State Board of Health may call upon the federal government.
41-23-35. Repealed.
41-23-37. Immunization practices for control of vaccine preventable diseases; school attendance by unvaccinated children.
41-23-39. Definitions applicable to Section 41-23-41.
41-23-41. Emergency service provider notice of exposure to blood or body fluids; licensed facility duties regarding infectious disease.
41-23-43. Vaccination program for first responders who may be exposed to infectious diseases when sent to bioterrorism or disaster locations; definitions; participation in program; exemptions; vaccine shortages; notification of program; administration of vaccination program; program dependant upon receipt of federal funding.
41-23-45. Department of Health to provide educational material on availability of vaccines for meningitis and hepatitis A and B to public universities and colleges for distribution to students.
41-23-47. Preparation of statewide Hepatitis C Virus plan.

§ 41-23-1. Rules and regulations; physicians, health-care facilities, and correctional facilities to report cases of communicable and other dangerous diseases; penalties.

(1) The State Board of Health shall adopt rules and regulations (a) defining and classifying communicable diseases and other diseases that are a danger to health based upon the characteristics of the disease; and (b) establishing reporting, monitoring and preventive procedures for those diseases.

(2) Upon the death of any person who has been diagnosed as having Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome (HIV/AIDS) or any Class 1 disease as designated by the State Board of Health, in a hospital or other health-care facility, in all other cases where there is an attending physician, and in cases in which the medical examiner, as defined in Section 41-61-53(f), investigates and certifies the cause of death, the attending physician, the person in charge of the hospital or health-care facility, or the medical examiner, as the case may be, shall report as soon as practicable to the Executive Officer of the State Board of Health or to other authorities the cause or contributing cause of death as required by the State Board of Health. Such reporting shall be according to procedures as required by the State Board of Health.

(3) Upon the death of any person who has been diagnosed as having Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome (HIV/AIDS), where there is not an attending physician, any family member or other person making disposition of the body who knows that such decedent had been diagnosed as having HIV/AIDS shall report this fact to the medical examiner as defined in Section 41-61-53(f), who shall report as soon as practicable to the Executive Officer of the State Board of Health or to other authorities the cause or contributing cause of death as required by the State Board of Health. Such reporting shall be according to procedures as required by the State Board of Health.

(4) Every practicing or licensed physician, or person in charge of a hospital, health-care facility, insurance company which causes to be performed blood tests for underwriting purposes or laboratory, shall report immediately to the Executive Officer of the State Board of Health or to other authorities as required by the State Board of Health every case of such diseases as shall be required to be reported by the State Board of Health. Such reporting shall be according to procedures, and shall include such information about the case, as shall be required by the State Board of Health. Insurance companies having such blood test results shall report immediately to the Executive Officer of the State Board of Health or to other authorities as required by the State Board of Health every case of such diseases as shall be required to be reported by the State Board of Health. The insurance company shall notify the individual on whom the blood test was performed in writing by certified mail of an adverse underwriting decision based upon the results of such individual's blood test but shall not disclose the specific results of such blood tests to the individual. The insurance company shall also inform the individual on whom the blood test was performed that the results of the blood test will be sent to the physician designated by the individual at the time of application and that such physician should be contacted for information regarding the blood test results. If a physician was not designated at the time of application, the insurance company shall request that the individual name a physician to whom a copy of the blood test can be sent.

(5) Any practicing or licensed physician, or person in charge of a hospital or health-care facility, who knows that a patient has a medical condition

specified by the Department of Health as requiring special precautions by health-care providers, shall report this fact and the need for appropriate precautions to any other institution or provider of health-care services to whom such patient is transferred or referred, according to regulations established by the State Board of Health.

(6) Any practicing or licensed physician or person in charge of a hospital, health-care facility or laboratory who fails to make the reports required under this section regarding Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome (HIV/AIDS) or any Class 1 disease or condition as designated by the State Board of Health shall be reported to the Board of Medical Licensure, in the case of a physician, or to the applicable licensing agency in the case of institutions, and such failure shall be grounds for suspension of license.

(7) Any person other than a practicing or licensed physician, or person in charge of a hospital or health-care facility, willfully failing to make the reports required under this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than Five Hundred Dollars ($500.00) or by confinement in the county jail for not more than thirty (30) days, or both.

(8) The provisions of this section are cumulative and supplemental to any other provision of law, and a conviction or penalty imposed under this section shall not preclude any other action at law, proceedings for professional discipline or other criminal proceedings.

(9) Notwithstanding any law of this state to the contrary, the State Board of Health is authorized to establish the rules by which exceptions may be made to the confidentiality provisions of the laws of this state for the notification of third parties of an individual's infection with any Class 1 or Class 2 disease, as designated by the State Board of Health, when exposure is indicated or there exists a threat to the public health and welfare. All notifications authorized by this section shall be within the rules established according to this subsection. All persons who receive notification of the infectious condition of an individual under this subsection and the rules established under this subsection shall hold such information in the strictest of confidence and privilege, shall not reveal the information to others, and shall take only those actions necessary to protect the health of the infected person or other persons where there is a foreseeable, real or probable risk of transmission of the disease.

(10) Each public or private correctional facility housing state offenders, federal offenders or offenders from any other jurisdiction shall require all offenders in the facility to be tested for tuberculosis and Human Immunodeficiency Virus (HIV) in conjunction with the rules and regulations of the State Department of Health. The reporting shall be according to procedures and shall include any information about the case that is required by the State Board of Health. In order to carry out the provisions of this section, the following shall apply:

(a) Any such public or private correctional facility may contract with the Mississippi Department of Corrections, the Mississippi State Department of Health, or other such appropriate state, federal or local entity for the inspection, monitoring or provision of any assistance necessary or desirable to maintain appropriate facilities for the purpose of identification, prevention, and treatment of communicable diseases and other conditions considered prejudicial to public health; and

(b) Any such public or private correctional facility shall grant representatives of the State Department of Health, in the discharge of its duties, access to all areas of the facility and to the offenders and staff at all times. The facility shall reimburse the State Department of Health for all costs incurred for the control of communicable diseases or other conditions prejudicial to public health in the facility and for the costs incurred for the control of communicable diseases or other conditions prejudicial to public health spreading from the facility, staff or inmates to other individuals or property in the county or state.

HISTORY:

Codes, 1906, § 2498; Hemingway's 1917, § 4847; 1930, § 4884; 1942, § 7040; Laws, 1983, ch. 522, § 3; Laws, 1988, ch. 557, § 1; Laws, 1989, ch. 556, § 1; Laws, 1992, ch. 398, § 1; Laws, 1997, ch. 532, § 1; Laws, 1998, ch. 507, § 1; Laws, 2000, ch. 449, § 1, eff from and after July 1, 2000.

Cross References —

Implied waiver of the medical privilege of patients regarding the release of medical information required to be reported by this section, see § 13-1-21.

Provision making hospital records the property of the hospital subject to access by health officials in the discharge of their duties pursuant to this section, see § 41-9-65.

Prohibition of one having an infectious or contagious disease, as defined in this section, from working, volunteering, or residing in family child care home, see § 43-20-57.

Revocation or suspension of physician's license, see § 73-25-27.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

I. Under Current Law.

1. Tuberculosis testing.
2.-5. [Reserved for future use].

II. Under Former § 41-23-35.

6. In general.

I. Under Current Law.

1. Tuberculosis testing.

Correctional facilities are required to administer tuberculosis tests to state offenders, federal offenders, and offenders from any other jurisdiction; however, the statute does not consider pretrial detainees and, therefore, pretrial detainees have no statutory right to tuberculosis testing. Gibbs v. Grimmette, 254 F.3d 545, 2001 U.S. App. LEXIS 13286 (5th Cir. Miss. 2001), cert. denied, 534 U.S. 1136, 122 S. Ct. 1083, 151 L. Ed. 2d 983, 2002 U.S. LEXIS 774 (U.S. 2002).

2.-5. [Reserved for future use].

II. Under Former § 41-23-35.

6. In general.

This section [Code 1942, § 7053] and other sections bestowed upon the state board of health the authority to make reasonable rules and regulations for the prevention of diseases and the protection of the health of the people. Hawkins v. Hoye, 108 Miss. 282, 66 So. 741, 1914 Miss. LEXIS 201 (Miss. 1914).

OPINIONS OF THE ATTORNEY GENERAL

Medical examiner is required to report to health department all deaths of persons diagnosed with AIDS; court of competent jurisdiction would issue subpoena for Board of Health records and Board would then have to comply with the request or ask the court to quash subpoena. 1992 Miss. Op. Att'y Gen. 522.

RESEARCH REFERENCES

ALR.

Physician's tort liability for unauthorized disclosure of confidential information about patient. 48 A.L.R.4th 668.

Discovery of identity of blood donor. 56 A.L.R.4th 755.

Am. Jur.

39 Am. Jur. 2d, Health §§ 53, 100-102.

61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers § 12.

66 Am. Jur. 2d, Records and Recording Laws § 46.

CJS.

39A C.J.S., Health and Environment §§ 29, 30, 88.

Law Reviews.

Aids in the Classroom. 58 Miss. L. J. 349, Fall 1988.

§ 41-23-2. Penalties for violating health department orders with respect to life-threatening communicable diseases.

Any person who shall knowingly and willfully violate the lawful order of the county, district or state health officer where that person is afflicted with a life-threatening communicable disease or the causative agent thereof shall be guilty of a felony and, upon conviction, shall be punished by a fine not exceeding Five Thousand Dollars ($5,000.00) or by imprisonment in the penitentiary for not more than five (5) years, or by both.

HISTORY:

Laws, 1988, ch. 557, § 2, eff from and after July 1, 1988.

Cross References —

Implied waiver of the medical privilege of patients regarding the release of medical information required to be reported by this section, see § 13-1-21.

Provisions making hospital records the property of the hospital subject to access by health officials in the discharge of their duties pursuant to this section, see § 41-9-65.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

RESEARCH REFERENCES

ALR.

Tort liability for infliction of venereal disease. 40 A.L.R.4th 1089.

AIDS infection as affecting right to attend public school. 60 A.L.R.4th 15.

Am. Jur.

39 Am. Jur. 2d, Health §§ 53, 100-102.

§ 41-23-3. Repealed.

Repealed by Laws, 1983, ch. 522, § 50, eff from and after July 1, 1983.

[Codes, 1906, § 2499; Hemingway's 1917, § 4848; 1930, § 4885; 1942, § 7041]

Editor's Notes —

Former § 41-23-3 provided a penalty for falsely disseminating rumors of virulent epidemic contagious diseases.

§ 41-23-5. Authority of State Department of Health to investigate diseases; authority to temporarily detain individuals for disease control purposes under certain circumstances.

The State Department of Health shall have the authority to investigate and control the causes of epidemic, infectious and other disease affecting the public health, including the authority to establish, maintain and enforce isolation and quarantine, and in pursuance thereof, to exercise such physical control over property and individuals as the department may find necessary for the protection of the public health. The State Department of Health is further authorized and empowered to require the temporary detainment of individuals for disease control purposes based upon violation of any order of the State Health Officer. For the purpose of enforcing such orders of the State Health Officer, persons employed by the department as investigators shall have general arrest powers. All law enforcement officers are authorized and directed to assist in the enforcement of such orders of the State Health Officer.

HISTORY:

Codes, 1906, § 2500; Hemingway's 1917, § 4849; 1930, § 4886; 1942, § 7042; Laws, 1983, ch. 522, § 4; Laws, 2010, ch. 505, § 12, eff from and after May 1, 2010. See Editor's Note.

Editor's Notes —

This section was amended by Laws of 2010, ch. 505, § 12, effective from and after July 1, 2010. The effective date of Laws of 2010, ch. 505, was subsequently amended by Laws of 2010, ch. 556, § 1 which provides:

"SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

"Section 18. This act shall take effect and be in force from and after May 1, 2010."

Cross References —

General duties of state board of health, see § 41-3-15.

Autopsy on petition of health officers to determine cause of death, see § 41-37-23.

RESEARCH REFERENCES

Am. Jur.

39 Am. Jur. 2d, Health §§ 58 et seq.

13 Am. Jur. Pl & Pr Forms (Rev), Habeas Corpus, Forms 161 et seq. (insane or mentally ill persons).

13 Am. Jur. Pl & Pr Forms (Rev), Health, Forms 16, 19 (complaint, petition, or declaration – against public health officials – wrongful quarantine and detention).

13 Am. Jur. Pl & Pr Forms (Rev), Health, Form 33 (petition or application – for writ of habeas corpus – illegal detention for purpose of compelling examination for contagious disease).

19A Am. Jur. Pl & Pr Forms (Rev), Physicians, Surgeons and Other Healers, Form 351 (complaint, petition, or declaration – failure to warn against exposure to communicable disease).

CJS.

39A C.J.S., Health and Environment §§ 28 et seq.

§§ 41-23-7 through 41-23-11. Repealed.

Repealed by Laws, 1983, ch. 522, § 50, eff from and after July 1, 1983.

§ 41-23-7. [Codes, 1892, § 2279; 1906, § 2497; Hemingway's 1917, § 4846; 1930, § 4883; 1942, § 7039; Laws, 1898, p. 93]

§ 41-23-9. [Codes, 1906, § 2493; Hemingway's 1917, § 4842; 1930, § 4879; 1942, § 7035; Laws, 1900, ch. 123]

§ 41-23-11. [Codes, Hemingway's 1921 Supp. § 4884m; 1930, § 4932; 1942, § 7088; Laws, 1918, ch. 203]

Editor's Notes —

Former § 41-23-7 directed the state board to act upon outbreak of virulent epidemic contagious diseases.

Former § 41-23-9 required the boards of supervisors to pay certain expenses involved in suppressing diseases.

Former § 41-23-11 authorized counties and municipalities to appropriate funds for the suppression of diseases.

§ 41-23-13. Suppression of nuisances injurious to public health.

The State Board of Health, when informed by a county health officer, or otherwise, of the existence of any matter or thing calculated to produce, aggravate, or cause the spread of any epidemic or contagious disease, or to affect injuriously the health of the public or community, may declare the same a nuisance. When it does so, it shall notify the district attorney, county attorney, municipal attorney, county health officer, municipal health officer or town marshal, of the district where the nuisance exists, who shall forthwith commence proceedings by information in the circuit court to have the same abated. The parties in interest shall have five (5) days' notice of the proceedings, which shall be served as in ordinary suits. Such proceedings may be tried by the judge, in term-time or in vacation, in a summary way, and if the matter be urgent, it shall be tried without delay. However, the parties in interest shall have a jury if they demand it, which the judge shall cause to be summoned, if in vacation, returnable at some early day, to be fixed by him, and the matter shall be tried as other causes by judge and jury. If the matter be found to be a nuisance, the judge shall order the same abated, which order shall be executed by the sheriff or other proper officer, and an appeal shall not be allowed therefrom. This section shall not affect the right which municipalities may have to abate a nuisance, or any common law or equity proceedings for that purpose.

HISTORY:

Codes, 1892, § 2277; 1906, § 2495; Hemingway's 1917, § 4844; 1930, § 4881; 1942, § 7037; Laws, 1922, ch. 234.

Cross References —

Duties of county attorneys, see § 19-23-11.

Municipal attorneys, see § 21-15-25.

Duties of city marshal or chief of police, see § 21-21-1.

Duties of district attorneys, see § 25-31-11.

Investigation of nuisance questions by state board of health, see § 41-3-15.

Nuisances, generally, see §§ 95-3-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

For the abatement of public health nuisances, a county may notify the state board of health of the nuisance pursuant to this section or proceed under § 19-5-105, pertaining to the cleaning of private property, and the county may consider passing an ordinance pursuant to § 19-5-9, which allows for the adoption of codes dealing with general public health, safety or welfare. 2002 Miss. Op. Att'y Gen. 586.

RESEARCH REFERENCES

Am. Jur.

39 Am. Jur. 2d, Health §§ 55, 72 et seq., 93.

13A Am. Jur. Legal Forms 2d, Nuisances, § 188:52 (certificate of health officer – as to nuisance).

13 Am. Jur. Pl & Pr Forms (Rev), Health, Form 2 (order – abating nuisance detrimental to public health).

13 Am. Jur. Pl & Pr Forms (Rev), Health, Form 32 (complaint, petition, or declaration – to recover cost of abating health nuisance).

CJS.

39A C.J.S., Health and Environment §§ 41–46.

Law Reviews.

Rychlak, Common-Law remedies for environmental wrongs: The role of private nuisance. 59 Miss. L. J. 657, Winter, 1989.

§§ 41-23-15 through 41-23-25. Repealed.

Repealed by Laws, 1983, ch 522, § 50, eff from and after July 1, 1983.

§ 41-23-15. [Codes, 1892, § 2278; 1906, § 2496; Hemingway's 1917, § 4845; 1930, § 4882; 1942, § 7038]

§ 41-23-17. [Codes, 1906, § 2503; Hemingway's 1917, § 4852; 1930, § 4889; 1942, § 7045]

§ 41-23-19. [Codes, 1892, § 2280; 1906, § 2504; Hemingway's 1917, § 4853; 1930, § 4890; 1942, § 7046]

§ 41-23-21. [Codes, 1906, § 2501; Hemingway's 1917, § 4850; 1930, § 4887; 1942, § 7043]

§ 41-23-23. [Codes, 1906, § 2492; Hemingway's 1917, § 4841; 1930, § 4878; 1942, § 7034; Laws, 1900, ch. 108]

§ 41-23-25. [Codes, Hemingway's 1921 Supp. § 4884a; 1930, § 4921; 1942, § 7077; Laws, 1918, ch. 194]

Editor's Notes —

Former § 41-23-15 granted the state board of health the power to establish quarantine.

Former § 41-23-17 directed the state board of health to enact quarantine regulations applicable to railroads and common carriers.

Former § 41-23-19 authorized the state board of health to purchase sanitary and quarantine services.

Former § 41-23-21 authorized the governor to provide the board of health with requisite means to enforce a quarantine.

Former § 41-23-23 authorized the board of supervisors in counties to pass ordinances for compulsory smallpox vaccination.

Former § 41-23-25 prohibited persons with venereal disease from having sexual intercourse with another.

§ 41-23-27. Powers of State Board of Health as to persons afflicted with infectious sexually transmitted disease.

The State Board of Health shall have full power to isolate, quarantine or otherwise confine, intern, and treat such person afflicted with such infectious sexually transmitted disease for such time and under such restrictions as may seem proper. Said board shall have full power to pass all such rules and regulations as to the isolation, quarantine, confinement, internment and treatment as may be needful.

Any person knowingly violating any rule or regulation promulgated by the state board of health, under the authority of this section, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by fine or imprisonment or both.

HISTORY:

Codes, Hemingway's 1921 Supp. §§ 4884b, 4884d; 1930, §§ 4922, 4924; 1942, §§ 7078, 7080; Laws, 1918, ch. 194; Laws, 1983, ch. 522, § 5, eff from and after July 1, 1983.

Cross References —

Medical treatment of minor for venereal disease without consent or knowledge of parent or guardian, see § 41-41-13.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

A claim against the county for services as a quarantine guard is not maintainable by suit, unless the minutes of the board of supervisors disclose an order establishing a local quarantine and also show that a contract for such services was made. The record must also show that the claim founded on such contract was presented to the board of supervisors and was disallowed. Marion County v. Woulard, 77 Miss. 343, 27 So. 619, 1989 Miss. LEXIS 727 (Miss. 1899).

RESEARCH REFERENCES

ALR.

Tort liability for infliction of venereal disease. 40 A.L.R.4th 1089.

Am. Jur.

39 Am. Jur. 2d, Health § 63.

13 Am. Jur. Pl & Pr Forms (Rev), Habeas Corpus, Forms 161 et seq. (insane or mentally ill persons).

CJS.

39A C.J.S., Health and Environment §§ 34, 35.

§ 41-23-29. Inspection and examination of person suspected of being afflicted with infectious sexually transmitted disease.

Any person suspected of being afflicted with any such infectious sexually transmitted disease shall be subject to physical examination and inspection by any representative of the state board of health. For failure or refusal to allow such inspection or examination, such person may be punished as for a misdemeanor.

HISTORY:

Codes, Hemingway's 1921 Supp. § 4884c; 1930, § 4923; 1942, § 7079; Laws, 1918, ch. 194; Laws, 1983, ch. 522, § 6, eff from and after July 1, 1983.

Cross References —

Medical treatment of minor for venereal disease without consent or knowledge of parent or guardian, see § 41-41-13.

JUDICIAL DECISIONS

1. In general.

A case holding that the affidavit was insufficient to charge statutory offense of failure or refusal to submit to examination for venereal disease. City of Jackson v. Mitchell, 135 Miss. 767, 100 So. 513, 1924 Miss. LEXIS 79 (Miss. 1924).

§ 41-23-30. Confidential testing for and treatment of sexually transmitted disease.

County health departments shall provide testing for and treatment of sexually transmitted disease. Such testing and/or treatment shall be kept in strict confidence. The county boards of supervisors are directed to make known to the public, through available media, the confidentiality of the testing for and treatment of sexually transmitted disease.

HISTORY:
Laws, 1975, ch. 386; Laws, 1983, ch. 522, § 7, eff from and after July 1, 1983.

§ 41-23-31. Donations to state board of health.

Any town, city or county is hereby authorized to make donations to the state board of health to assist in the enforcement of Sections 41-23-25 through 41-23-29.

HISTORY:
Codes, Hemingway's 1921 Supp. § 4884e; 1930, § 4925; 1942, § 7081; Laws, 1918, ch. 194.

Editor's Notes —
Section 41-23-25 referred to in this section was repealed by Laws of 1983, ch. 522, § 50, eff from and after July 1, 1983.

Cross References —
Municipal power to prevent spread of contagious and infectious diseases, see §§ 21-19-3, 21-19-17.

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. 2d, Health §§ 10, 11.

CJS.
39A C.J.S., Health and Environment §§ 18, 19.

§ 41-23-33. State Board of Health may call upon the federal government.

The State Board of Health, with the consent of the governor, when it deems it proper or necessary to do so, may call upon the government of the United States for such financial and medical aid as the necessities created by an epidemic or any other health emergency may require.

HISTORY:
Codes, 1906, § 2502; Hemingway's 1917, § 4851; 1930, § 4888; 1942, § 7044; Laws, 1983, ch. 522, § 8, eff from and after July 1, 1983.

§ 41-23-35. Repealed.

Repealed by Laws, 1983, ch. 522, § 50, eff from and after July 1, 1983.

[Codes, 1892, § 2287; 1906, § 2511; Hemingway's 1917, § 4860; 1930, § 4897; 1942, § 7053]

Editor's Notes —
Former § 41-23-35 provided penalties for violation of health rules.

§ 41-23-37. Immunization practices for control of vaccine preventable diseases; school attendance by unvaccinated children.

Whenever indicated, the state health officer shall specify such immunization practices as may be considered best for the control of vaccine preventable diseases. A listing shall be promulgated annually or more often, if necessary.

Except as provided hereinafter, it shall be unlawful for any child to attend any school, kindergarten or similar type facility intended for the instruction of children (hereinafter called "schools"), either public or private, with the exception of any legitimate home instruction program as defined in Section 37-13-91, Mississippi Code of 1972, for ten (10) or less children who are related within the third degree computed according to the civil law to the operator, unless they shall first have been vaccinated against those diseases specified by the state health officer.

A certificate of exemption from vaccination for medical reasons may be offered on behalf of a child by a duly licensed physician and may be accepted by the local health officer when, in his opinion, such exemption will not cause undue risk to the community.

Certificates of vaccination shall be issued by local health officers or physicians on forms specified by the Mississippi State Board of Health. These forms shall be the only acceptable means for showing compliance with these immunization requirements, and the responsible school officials shall file the form with the child's record.

If a child shall offer to enroll at a school without having completed the required vaccinations, the local health officer may grant a period of time up to ninety (90) days for such completion when, in the opinion of the health officer, such delay will not cause undue risk to the child, the school or the community. No child shall be enrolled without having had at least one (1) dose of each specified vaccine.

Within thirty (30) days after the opening of the fall term of school (on or before October 1 of each year) the person in charge of each school shall report to the county or local health officer, on forms provided by the Mississippi State Board of Health, the number of children enrolled by age or grade or both, the number fully vaccinated, the number in process of completing vaccination requirements, and the number exempt from vaccination by reason for such exemption.

Within one hundred twenty (120) days after the opening of the fall term (on or before December 31), the person in charge of each school shall certify to the local or county health officer that all children enrolled are in compliance with immunization requirements.

For the purpose of assisting in supervising the immunization status of the children the local health officer, or his designee, may inspect the children's records or be furnished certificates of immunization compliance by the school.

It shall be the responsibility of the person in charge of each school to enforce the requirements for immunization. Any child not in compliance at the end of ninety (90) days from the opening of the fall term must be suspended until in compliance, unless the health officer shall attribute the delay to lack of supply of vaccine or some other such factor clearly making compliance impossible.

Failure to enforce provisions of this section shall constitute a misdemeanor and upon conviction be punishable by fine or imprisonment or both.

HISTORY:
Laws, 1978, ch. 530, 1; Laws, 1983, ch. 522, § 9, eff from and after July 1, 1983.

Cross References —
Powers of boards of trustees of school districts to require the vaccination of school children, see § 37-7-301.

Inclusion of immunization information in pupils' permanent records, see § 37-15-1.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use].

II. Under Former Law.

6. Under former § 41-23-7.
7. Under former § 41-23-23.

I. Under Current Law.

1. In general.
Section 41-23-37 serves an overriding and compelling public interest which extends to the exclusion of a child until immunization has been effected; the provision of § 41-23-37 providing an exemption because of religious belief is in violation of the Fourteenth Amendment to the United States Constitution and is void. Brown v. Stone, 378 So. 2d 218, 1979 Miss. LEXIS 2544 (Miss. 1979), cert. denied, 449 U.S. 887, 101 S. Ct. 242, 66 L. Ed. 2d 112, 1980 U.S. LEXIS 3404 (U.S. 1980).

2.-5. [Reserved for future use].

II. Under Former Law.

6. Under former § 41-23-7.
This section [Code 1942, § 7039] referred to in upholding the validity of a municipal ordinance requiring smallpox vaccination of school children. Hartman v. May, 168 Miss. 477, 151 So. 737, 1934 Miss. LEXIS 349 (Miss. 1934).

7. Under former § 41-23-23.
This section [Code 1942, § 7034] referred to in upholding the validity of a municipal ordinance requiring smallpox vaccination of school children. Hartman v. May, 168 Miss. 477, 151 So. 737, 1934 Miss. LEXIS 349 (Miss. 1934).

RESEARCH REFERENCES

ALR.
Power of court or other public agency to order vaccination over parental religious objection. 94 A.L.R.5th 613.

Am. Jur.
79 Am. Jur. 2d, Welfare Laws §§ 5-46.

§ 41-23-39. Definitions applicable to Section 41-23-41.

The following terms when used in Sections 41-23-39 and 41-23-41 shall have the following meanings ascribed in this section:

(a) "Emergency medical technician" means a person licensed under Section 41-59-1 et seq. to provide emergency medical services as an emergency medical technician-ambulance, emergency medical technician-advanced, emergency medical technician-paramedic, or emergency medical technician-nurse-paramedic.

(b) "Fire department" means service groups (paid or volunteer) that are organized and trained for the prevention and control of loss of life and property from fire and/or other emergencies.

(c) "Firefighter" means an individual who is assigned to fire fighting activity and is required to respond to alarms and perform emergency actions at the location of a fire, hazardous materials or other emergency incident.

(d) "Infectious disease" means any condition as listed or determined by the State Department of Health that may be transmitted by an infected person.

(e) "Licensed facility" means hospital, nursing home, medical clinic or dialysis center, as licensed by the state to provide medical care, but shall not include a physician's office.

(f) "Bystanding caregiver" means any person who is unlicensed or noncertified in providing medical services or emergency medical services, who provides care or services to an injured person at the scene of an emergency before the arrival and rendering of emergency medical services by a licensed or certified emergency medical services provider.

HISTORY:

Laws, 1988, ch. 557, § 6, eff from and after July 1, 1988; Laws, 1998, ch. 316, § 1, eff from and after July 1, 1998; Laws, 2018, ch. 392, § 2, eff from and after July 1, 2018.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected two typographical errors in (a). The words "emergency medical technical-intermediate" and "emergency medical technical-nurse-paramedic" were changed to "emergency medical technician-intermediate" and "emergency medical technician-nurse-paramedic," respectively. The Joint Committee ratified the corrections at its April 26, 2001, meeting.

Amendment Notes —

The 2018 amendment substituted "meanings ascribed in this section" for "meanings herein ascribed" in the introductory paragraph; and in (a), substituted "under Section 41-59-1 et seq." for "pursuant to Section 41-59-1 et seq.," and deleted "Mississippi Code of 1972" thereafter; and substituted "emergency medical technician-advanced" for "emergency medical technician-intermediate."

§ 41-23-41. Emergency service provider notice of exposure to blood or body fluids; licensed facility duties regarding infectious disease.

If, in the course of providing emergency services to any person subsequently transported to a licensed facility, an emergency medical technician, fire fighter, bystanding caregiver or other provider of emergency rescue services is exposed by direct contact to the patient's blood or other internal body fluids, the emergency medical technician, fire fighter, bystanding caregiver or the emergency service provider, or his/her employer, shall notify the licensed facility to which the patient is transported of the blood and/or body fluid exposure. If the patient is subsequently diagnosed as having an infectious disease specified by the State Department of Health as being transmissible by blood or other internal body fluids, the licensed facility shall notify the emergency medical technician, fire fighter, bystanding caregiver, emergency service provider, or his/her employer, in such detail and according to the manner prescribed by the State Board of Health in its regulations. The State

Board of Health shall adopt appropriate regulations to address the diseases involved.

HISTORY:
Laws, 1988, ch. 557, § 7; Laws, 1998, ch. 316, § 2, eff from and after July 1, 1998.

Cross References —
Definitions applicable to this section, see § 41-23-39.

RESEARCH REFERENCES

ALR.
Tort liability for infliction of venereal disease. 40 A.L.R.4th 1089.

Products liability: what is an "unavoidably unsafe" product. 70 A.L.R.4th 16.

§ 41-23-43. Vaccination program for first responders who may be exposed to infectious diseases when sent to bioterrorism or disaster locations; definitions; participation in program; exemptions; vaccine shortages; notification of program; administration of vaccination program; program dependant upon receipt of federal funding.

(1) As used in this section:

(a) "Department" means the Mississippi State Department of Health, Bioterrorism Division;

(b) "Director" means the Executive Director of the State Board of Health;

(c) "Bioterrorism" means the intentional use of any microorganism, virus, infectious substance or biological product that may be engineered as a result of biotechnology or any naturally occurring or bioengineered component of any microorganism, virus, infectious substance or biological product, to cause or attempt to cause death, disease or other biological malfunction in any living organism;

(d) "Disaster locations" means any geographical location where a bioterrorism attack, terrorist attack, catastrophic or natural disaster or emergency occurs;

(e) "First responders" means state and local law enforcement personnel, fire department personnel, emergency medical personnel, emergency management personnel and public works personnel who may be deployed to bioterrorism attacks, terrorist attacks, catastrophic or natural disasters and emergencies.

(2) The department shall offer a vaccination program for first responders who may be exposed to infectious diseases when deployed to disaster locations. The vaccinations shall include, but are not limited to, hepatitis A vaccination, hepatitis B vaccination, diphtheria-tetanus vaccination, influenza vaccination, pneumococcal vaccination and other vaccinations when recommended by the United States Public Health Service and in accordance with Federal Emergency Management Directors Policy. Immune globulin will be made available when necessary.

(3) Participation in the vaccination program shall be voluntary by the first responders, except for first responders who are classified as having

"occupational exposure" to blood borne pathogens as defined by the Occupational Safety and Health Administration Standard contained at 29 CFR 1910.10300 who shall be required to take the designated vaccinations or otherwise required by law.

(4) A first responder shall be exempt from vaccinations when a written statement from a licensed physician is presented indicating that a vaccine is medically contraindicated for that person or the first responder signs a written statement that the administration of a vaccination conflicts with their religious tenets.

(5) If there is a vaccine shortage, the director, in consultation with the Governor and the Centers for Disease Control and Prevention, shall give priority for vaccination to first responders.

(6) The department shall notify first responders to the availability of the vaccination program and shall provide educational materials on ways to prevent exposure to infectious diseases.

(7) The department may contract with county and local health departments, not-for-profit home health-care agencies, hospitals and physicians to administer a vaccination program for first responders.

(8) This section shall be effective upon receipt of federal funding and/or federal grants for administering a first responders vaccination program. Upon receipt of that funding, the department shall make available the vaccines to first responders as provided in this section.

HISTORY:

Laws, 2003, ch. 549, § 1, eff from and after July 1, 2003.

§ 41-23-45. Department of Health to provide educational material on availability of vaccines for meningitis and hepatitis A and B to public universities and colleges for distribution to students.

The State Department of Health shall prepare written educational information on the risks associated with meningitis and hepatitis A and B and the availability and effectiveness of available vaccines for these diseases. The department shall provide this written educational information to the Board of Trustees of State Institutions of Higher Learning and the Mississippi Community College Board to be used to inform students about meningitis and hepatitis A and B. This information shall be sent to students with their letters of acceptance for admission or included in the students' admission packets.

HISTORY:

Laws, 2003, ch. 549, § 2; Laws, 2014, ch. 397, § 56, eff from and after July 1, 2014.

§ 41-23-47. Preparation of statewide Hepatitis C Virus plan.

Not later than January 1, 2006, the State Department of Health, in collaboration with the University of Mississippi Medical Center and the

Veterans Affairs Medical Center, shall prepare and deliver to the Legislature a statewide Hepatitis C Virus plan.

HISTORY:
Laws, 2004, ch. 574, § 1, eff from and after July 1, 2004.

RUBELLA SCREENING, COUNSELING AND VACCINATION

Sec.	
41-23-101.	Rubella screening tests.
41-23-103.	Counseling as to risks and benefits of rubella immunization.
41-23-105.	Civil immunity for persons performing rubella tests, counseling and vaccinations.

§ 41-23-101. Rubella screening tests.

The state board of health is hereby authorized to offer rubella screening tests to all females of childbearing age and to collect fees to defray the costs of such tests, provided that such fees shall not exceed the applicable Medicaid rate.

HISTORY:
Laws, 1981, ch. 414, § 1, eff from and after July 1, 1981.

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. 2d, Health §§ 27, 28.

CJS.
39A C.J.S., Health and Environment § 33.

§ 41-23-103. Counseling as to risks and benefits of rubella immunization.

The state board of health shall counsel all females found after testing to be nonimmune to rubella as to the risks and benefits of immunization and as to the associated risks of birth defects in pregnancies occurring within ninety (90) days of vaccination.

HISTORY:
Laws, 1981, ch. 414, § 2, eff from and after July 1, 1981.

Cross References —
Civil immunity for persons reforming rubella counseling as provided in this section, see § 41-23-105.

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. 2d, Health §§ 58 et seq.

CJS.
39A C.J.S., Health and Environment § 33.

§ 41-23-105. Civil immunity for persons performing rubella tests, counseling and vaccinations.

Neither the state board of health nor any physician or nurse employed by the board who, in good faith and in the exercise of reasonable care, performs testing for susceptibility to rubella, renders counseling as provided in Section 41-23-103, or administers vaccinations against rubella shall be liable for any civil damages as a result of any acts committed in good faith and in the exercise of reasonable care or omissions in good faith and in the exercise of reasonable care by such persons in performing such testing, counseling or vaccinations.

HISTORY:
Laws, 1981, ch. 414, § 3, eff from and after July 1, 1981.

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. 2d, Health §§ 31 et seq.

CJS.
39A C.J.S., Health and Environment § 33.

SCHOOL-LOCATED INFLUENZA VACCINATION PROGRAMS

Sec.
41-23-121. Funding for School-Located Influenza Vaccination Programs.

§ 41-23-121. Funding for School-Located Influenza Vaccination Programs.

(1) It is the intent of the Legislature that the State Department of Health apply for federal grants and appropriations under the federal Patient Protection and Affordable Care Act (PPACA), Public Law 111-148, to fund, build infrastructure, promote and expand school-located influenza vaccination programs to provide seasonal influenza vaccinations for school-aged children. The agency may seek grants and appropriations from any source.

(2) The State Department of Health shall make information regarding federal grant and appropriations opportunities under PPACA available to local government agencies, local public health departments, school districts, and state and local nonprofit organizations via the agency's website.

HISTORY:
Laws, 2011, ch. 473, § 2, eff from and after July 1, 2011.

Editor's Notes —
Laws of 2011, ch. 473, § 1, provides:

"SECTION 1. The State of Mississippi finds as follows:

"(a) Influenza is a contagious respiratory illness caused by influenza viruses. The best way to help prevent seasonal influenza is by getting a vaccination each year.

"(b) Every year in the United States, on average, more than two hundred thousand (200,000) people are hospitalized from influenza-related complications and about thirty-six thousand (36,000) people, mostly the elderly, die from influenza-related causes.

"(c) The United States Centers for Disease Control and Prevention (CDC) Advisory Committee on Immunization Practices recommends seasonal influenza vaccinations for all eligible persons in the United States, including eligible children aged six (6) months through eighteen (18) years of age.

"(d) Children and young adults five (5) years to nineteen (19) years of age are three (3) to four (4) times more likely to be infected with influenza than adults.

"(e) School-aged children are the population group most responsible for transmission of contagious respiratory viruses, including influenza.

"(f) The elderly are the next most vulnerable population to severe illness from influenza due to weaker immune response to vaccination.

"(g) School-located influenza vaccination programs may be an effective way to vaccinate children while reducing transmission and infection rates to the larger community and at the same time reducing rates of school absenteeism due to children being infected with influenza.

"(h) Schools can be an effective infrastructure tool to improve pandemic planning by identifying known and effective pandemic vaccination centers.

"(i) Although experience has demonstrated the feasibility and success of school-located influenza vaccination programs in vaccinating children, funding and logistical issues, particularly involving the delivery of vaccine to children with private insurance coverage, are issues with program sustainability.

"(j) Given the significant fiscal challenges ahead for Mississippi, it is important for the Legislature to ensure that state agencies maximize their opportunity to obtain additional federal funds."

Cross References —

State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

CHAPTER 24.

SICKLE CELL TESTING PROGRAM

Sec.
41-24-1. Establishment of testing program for sickle cell anemia or sickle cell trait.
41-24-3. Persons who may be tested.
41-24-5. Distribution of educational materials.

§ 41-24-1. Establishment of testing program for sickle cell anemia or sickle cell trait.

The state board of health is hereby authorized and empowered to promulgate such rules and regulations necessary to establish a program of testing to determine the presence of the disease or condition known as sickle cell anemia or sickle cell trait.

HISTORY:
Codes, 1942, § 7076-21; Laws, 1972, ch. 414, § 1; Laws, 1983, ch. 522, § 10, eff from and after July 1, 1983.

§ 41-24-3. Persons who may be tested.

In order to accomplish a program of testing for the disease or condition known as sickle cell anemia and/or sickle cell trait which will be most effective and efficient throughout the state, the state board of health may, by rule or regulation, require testing of only those persons who, because of race, ethnic group or other reasons are determined to be particularly susceptible to the condition.

HISTORY:
Codes, 1942, § 7076-22; Laws, 1972, ch. 414, § 2; Laws, 1983, ch. 522, § 11, eff from and after July 1, 1983.

§ 41-24-5. Distribution of educational materials.

The state board of health is hereby authorized and empowered to prepare and distribute educational materials relating to sickle cell anemia and sickle cell trait in conjunction with the program of testing as provided for above. Such materials shall be distributed to school teachers and administrators in charge of children who are susceptible to the condition, as well as being distributed generally.

HISTORY:
Codes, 1942, § 7076-23; Laws, 1972, ch. 414, § 3, eff from and after passage (approved April 27, 1972).

CHAPTER 25.

DISINFECTION AND SANITATION OF BUILDINGS AND PREMISES

Sec.
41-25-1. State Board of Health empowered to make rules and regulations concerning disinfection and sanitation.
41-25-3. Assessment of fees.
41-25-5 through 41-25-11. Repealed.
41-25-13. Sanitary code for house trailers, house trailer camps, and tourist camps.

§ 41-25-1. State Board of Health empowered to make rules and regulations concerning disinfection and sanitation.

The State Board of Health shall have authority to make such sanitary investigations and prepare such rules and regulations governing the disinfection and sanitation of public buildings and vehicles as it may deem necessary for the protection and improvement of health.

HISTORY:
Codes, 1906, § 2513; Hemingway's 1917, § 4862; 1930, § 4898; 1942, § 7054; Laws, 1983, ch. 522, § 12, eff from and after July 1, 1983.

Cross References —
Duties of State Board of Health, generally, see § 41-3-15.

Duties of county health officer, generally, see § 41-3-41.

Regulation of hotels, see §§ 41-49-1 et seq.

RESEARCH REFERENCES

Am. Jur.
13 Am. Jur. 2d, Buildings § 31.
39 Am. Jur. 2d, Health §§ 76-79.

CJS.
39A C.J.S., Health and Environment § 31.

§ 41-25-3. Assessment of fees.

The board shall assess a fee in the following amount and for the following purpose:

Mobile home and recreational vehicle park annual permit fee $50.00

The fee authorized under this section shall not be assessed for any mobile home and recreational vehicle park operated by a state or federal agency or institution.

HISTORY:
Laws, 1986, ch. 371, § 3; Laws, 1989, ch. 313, § 2; Laws, 1989, ch. 547, § 2; Laws, 1991, ch. 606, § 2, eff from and after July 1, 1991.

Editor's Notes —
A former § 41-25-3 [Codes, 1906, § 2514; Hemingway's 1917, § 4863; 1930, § 4899; 1942, § 7055] Repealed by Laws of 1983, ch. 522, § 50, effective from and after July 1, 1983, directed, authorized and empowered the State Board of Health to make rules and regulations concerning disinfection and sanitation.

RESEARCH REFERENCES

Am. Jur.
13 Am. Jur. 2d, Buildings § 31.
39 Am. Jur. 2d, Health §§ 109, 110.

CJS.
39A C.J.S., Health and Environment §§ 18-23, 30, 31, 47–53, 66, 91, 92.

§§ 41-25-5 through 41-25-11. Repealed.

Repealed by Laws, 1983, ch. 522, § 50, eff from and after July 1, 1983.

§ 41-25-5. [Codes, 1906, § 2515; Hemingway's 1917, § 4864; 1930, § 4900; 1942, § 7056]

§ 41-25-7. [Codes, Hemingway's 1917, § 4865; 1930, § 4901; 1942, § 7057]

§ 41-25-9. [Codes, 1906, § 2516; Hemingway's 1917, § 4866; 1930, § 4902; 1942, § 7058]

§ 41-25-11. [Codes, Hemingway's 1917, § 4867; 1930, § 4903; 1942, § 7059]

Editor's Notes —

Former § 41-25-5 mandated compliance with all rules and regulations of the state board of health.

Former § 41-25-7 specified penalties for failing to comply with the provisions of the prior sections.

Former § 41-25-9 authorized the board of supervisors to appropriate money for screening, fumigating and oiling to prevent yellow fever.

Former § 41-25-11 authorized health officers to enter premises mentioned in the previous section.

§ 41-25-13. Sanitary code for house trailers, house trailer camps, and tourist camps.

The state board of health shall have the power to establish sanitary regulations for house trailers, house trailer camps, and tourist camps, which shall be called the sanitary code. The sanitary code may include provisions for the sanitary construction, maintenance, regulation, inspection, equipment and control of house trailer camps, tourist camps, and house trailers, and for their registration, with particular and special provisions with respect to plumbing, drainage, water supply and disposal or removal of toilet excretion, garbage and all other waste or refuse substances and accumulations. No house trailer camp, tourist camp, or house trailer shall be located, operated or drawn within this state unless and until it has complied with such provisions. Nothing herein contained shall limit or qualify the power of the state department of health to adopt and enforce other, additional or emergency regulations for house trailer or tourist camps and house trailers whenever the health of the people of this state is endangered or threatened.

Every regulation adopted by the state board of health shall state the date on which it takes effect, and a copy thereof, duly signed by the executive officer of the state board of health, shall be filed as a public record in the state department of health and a copy thereof shall be sent by the state board of health to each health officer within the state. The state board of health shall furnish certified copies of such code and its amendments and such certified copies shall be received in evidence in all courts or other judicial proceedings in the state. The provisions of the sanitary code shall have the force and effect of law.

Violations of the provisions of the sanitary code relating to house trailer camps, tourist camps, and house trailers are a misdemeanor. Each day on which a violation thereof continues is a separate offense.

HISTORY:

Codes, 1942, § 8269; Laws, 1938, ch. 200; Laws, 1964, ch. 457, eff from and after passage (approved June 6, 1964).

Cross References —

Ad valorem taxes on mobile homes, see §§ 27-53-1 et seq.

Highway regulation of house trailers, see § 63-5-25.

Regulation of mobile homes, generally, see §§ 75-49-1 et seq.

RESEARCH REFERENCES

ALR.

Validity of zoning or building regulations restricting mobile homes or trailers to established mobile home or trailer parks. 17 A.L.R.4th 106.

Breach of warranty in sale, installation, repair, design, or inspection of septic or sewage disposal systems. 50 A.L.R.5th 417.

Am. Jur.

53A Am. Jur. 2d, Mobile Homes and Trailer Parks § 6.

17A Am. Jur. Pl & Pr Forms (Rev), Mobile Homes, Trailer Parks, and Tourist Camps (complaint – failure to maintain water and septic systems – for damages).

CJS.

39A C.J.S., Health and Environment §§ 54, 55.

CHAPTER 26.

MISSISSIPPI SAFE DRINKING WATER ACT OF 1997

In General. 41-26-1
Community Public Water System. 41-26-101

IN GENERAL

Sec.	
41-26-1.	Short title.
41-26-2.	Legislative purpose and intent.
41-26-3.	Definitions.
41-26-5.	Mississippi Primary Drinking Water Regulations.
41-26-6.	Adoption of rules and regulations governing public water systems.
41-26-7.	Powers and duties of director.
41-26-8.	Requirements for construction and operation of public water systems; role of director.
41-26-9.	Action by director when contaminant is present in or likely to enter public water system.
41-26-11.	Plan for provision of safe drinking water under emergency circumstances.
41-26-13.	Notices of noncompliance, failure to perform monitoring, variances, and exemptions.
41-26-14.	Cross connection control program; legislative intent; adoption of regulations; certain cross connections designated as low hazard; requirements and deadlines for high hazard and low hazard cross connections; inspections; discontinuance of service for violations; local ordinances regulating cross connections or backflow preventer devices may not be more stringent than provisions of this section.
41-26-15.	Prohibited acts.
41-26-17.	Violation of chapter—complaint.
41-26-19.	Powers of director; hearings under chapter.
41-26-21.	Final order; cost bonds; appeal.
41-26-23.	Establishment of Drinking Water Quality Analysis Fund [Repealed effective July 1, 2020].
41-26-25.	Creation of Public Water System Assistance Fund.
41-26-31.	Enforcement of chapter; civil penalties.

§ 41-26-1. Short title.

This chapter shall be known and cited as the “Mississippi Safe Drinking Water Act of 1997.”

HISTORY:
Laws, 1976, ch. 452, § 1; Laws, 1997, ch. 389, § 7, eff from and after July 1, 1997.

Cross References —
Air and Water Pollution Control Law, see §§ 49-17-1 et seq.

Regulation of bottled drinking water, see §§ 75-29-801 et seq.

RESEARCH REFERENCES

ALR.
Validity, construction, and effect of statute, ordinance, or other measure involving chemical treatment of public water supply. 43 A.L.R.2d 453.

Validity and construction of anti-water pollution statutes or ordinances. 32 A.L.R.3d 215.

Liability of water supplier for damages resulting from furnishing impure water. 54 A.L.R.3d 936.

Actions brought under Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act)(33 U.S.C.S. §§ 1251 et seq.) – Supreme Court cases. 163 A.L.R. Fed. 531.

§ 41-26-2. Legislative purpose and intent.

(1) The Legislature finds that:

(a) An adequate supply of safe, pure drinking water is essential to the public health and welfare and the maintenance of that supply through viable water systems is an important natural resource in the economic development of the state;

(b) The federal Safe Drinking Water Act, as amended, provides a comprehensive framework for regulating the collection, treatment, storage and distribution of potable water; and

(c) It is in the public interest of the state to assume primary enforcement responsibility under the federal Safe Drinking Water Act, as amended.

(2) The purposes of this chapter shall be:

(a) To establish a state program to assure provision of safe drinking water to the public by establishing drinking water standards consistent with the federal act and developing a state program to implement and enforce the standards. The standards shall protect the public health and welfare to the extent feasible using technology, treatment techniques and other means which are generally available.

(b) To develop a process for implementing plans for the provision of safe drinking water in emergencies;

(c) To provide public notice of potentially hazardous conditions that may exist in a water supply; and

(d) To authorize the director to prevent the creation of new potentially non-viable community water systems, to provide technical assistance to existing potentially non-viable systems to help those systems become viable and to encourage the elimination of non-viable systems whose problems cannot be corrected.

(3) It is the intent of the Legislature that the board in implementing Section 41-26-5(3) shall work cooperatively with organizations which provide training and assistance to public water systems. The board shall, consistent with state and federal law and rules and regulations and subject to the availability of funds, contract annually with and provide funding for those organizations. Any contract and funding shall be contingent upon receipt of an acceptable scope of work and cost proposal, as determined by the department and upon the contractor satisfactorily meeting performance objectives established in the contract.

HISTORY:

Laws, 1997, ch. 389, § 1, eff from and after July 1, 1997.

Federal Aspects—

Federal Safe Drinking Water Act, see 42 USCS § 300f et seq.

§ 41-26-3. Definitions.

For purposes of this chapter, the following terms shall have the meaning ascribed herein unless the context clearly indicates otherwise:

(a) "Administrator" means the Administrator of the U.S. Environmental Protection Agency or the administrator's designee.

(b) "Board" means the Mississippi State Board of Health.

(c) "Community public water system" means a public water system serving at least fifteen (15) individual service connections used by year-round consumers or regularly servicing at least twenty-five (25) individual consumers year-round.

(d) "Construction" means any placement, assembly or installation of facilities or equipment, including contractual obligations to purchase those facilities or equipment, at the location where the equipment will be used, including any preparation work at any location.

(e) "Contaminant" means any physical, chemical, biological or radiological substance or matter in water.

(f) "Cross connection" means any direct interconnection between a public water system and a non-public water system or other source which may result in the contamination of the drinking water provided by the public water system.

(g) "Department" means the Mississippi State Department of Health.

(h) "Director" means the State Health Officer or the health officer's designee.

(i) "Federal act" means the Safe Drinking Water Act of 1974, as amended, principally codified as 42 U.S.C.S. Section 300f et seq.

(j) "Federal agency" means any department, agency or instrumentality of the United States.

(k) "Interested party" means any person claiming an interest in the water system operation that is the subject of the hearing and who may be affected by the water system.

(*l*) "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

(m) "Municipality" means a city, town, village or other public body created by state law, or an Indian tribal organization authorized by law.

(n) "National primary drinking water regulations" means primary drinking water regulations promulgated by the administrator under the federal act.

(o) "Nontransient, noncommunity public water system" means a public water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year.

(p) "Person" means an individual, corporation, company, association, partnership, municipality or federal agency.

(q) "Public water system" means a system for providing to the public piped water for human consumption through pipes or other constructed conveyances if the system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals. The term includes but is not limited to:

(i) Any collection, treatment, storage and distribution facilities under control of the operator of the system and used primarily in connection with the system; and

(ii) Any collection or pre-treatment storage facilities not under the control which are used primarily in connection with the system.

(r) "Semi-public water system" means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances if the system has more than one but less than fifteen (15) service connections.

(s) "Supplier of water" means any person who owns, or controls a public water system.

(t) "Violator" means a public water system, an officer or director of a public water system, an operator, certified or otherwise, or any other person designated by a public water system or the department as the official responsible for the operation of a public water system.

HISTORY:

Laws, 1976, ch. 452, § 2; Laws, 1997, ch. 389, § 8, eff from and after July 1, 1997.

OPINIONS OF THE ATTORNEY GENERAL

Under appropriate circumstances, a professional engineer, or any other person, operating under and subject to the provisions of the Safe Water Act or the regulations adopted in furtherance of that Act, may be found to be a violator and subjected to the penalties prescribed in § 41-26-31. 2003 Miss. Op. Att'y Gen. 598.

§ 41-26-5. Mississippi Primary Drinking Water Regulations.

(1) In addition to any other duties required by law, the board shall have the following powers and duties concerning safe drinking water:

(a) To establish policies, requirements or standards governing the source, collection, distribution, purification, treatment and storage of water for public water systems as it deems necessary for the provision of safe drinking water;

(b) To adopt, modify, repeal and promulgate, after due notice and hearing and in accordance with the Mississippi Administrative Procedures Law and Section 41-26-6, and where not otherwise prohibited by federal or state law, to make exceptions to and grant exemptions and variances from, and to enforce rules and regulations implementing the powers and duties of the board under this chapter;

(c) To enter into, and to authorize the director to execute contracts, grants and cooperative agreements with, any federal or state agency or subdivision thereof, interstate agency, or any other person in connection with carrying out this chapter; and

(d) To discharge other powers, duties and responsibilities which may be necessary to implement this chapter.

(2)(a) Except as provided in Section 41-26-5(2)(b), regulations adopted under this section shall apply to each public water system in the state.

(b) Regulations shall not apply to a public water system:

(i) Which consists only of distribution and storage facilities, and which does not have any collection and treatment facilities;

(ii) Which obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

(iii) Which does not sell water to any person; and

(iv) Which is not a carrier which conveys passengers in interstate commerce.

(3) The board shall develop and implement a technical assistance program to help existing potentially non-viable community public water systems to become viable and to improve the technical, managerial or financial capabilities of small community public water systems. In developing this program, the board shall work cooperatively with organizations which currently provide training and assistance to public water systems.

HISTORY:

Laws, 1976, ch. 452, § 3; Laws, 1997, ch, 389, § 9, eff from and after July 1, 1997.

Cross References —

General duties of state board of health, see § 41-3-15.

Regulation of bottled drinking water, see §§ 75-29-801 et seq.

RESEARCH REFERENCES

ALR.

Validity, construction, and effect of statute, ordinance, or other measure involving chemical treatment of public water supply. 43 A.L.R.2d 453.

Validity and construction of anti-water pollution statutes or ordinances. 32 A.L.R.3d 215.

§ 41-26-6. Adoption of rules and regulations governing public water systems.

(1) The board may adopt rules and regulations governing public water systems, but those rules and regulations shall, except as expressly required by law, be no more stringent or extensive in scope, coverage and effect than regulations promulgated by the United States Environmental Protection Agency.

(2) If federal regulations do not provide a standard, criteria or guidance addressing public water systems, the board may promulgate rules and regulations to address these matters when the board determines that the rules and regulations are necessary to protect the public health and welfare.

(3) Nothing in this section shall prohibit the director by order or in the approval of plans for construction or changes from placing additional requirements on a public water system on a case by case basis in order to provide for

the quantity and quality of drinking water or to protect the public health and welfare.

HISTORY:
Laws, 1997, ch. 389, § 2, eff from and after July 1, 1997.

§ 41-26-7. Powers and duties of director.

In addition to any other duties required by law, the director shall have the following powers and duties concerning safe drinking water:

(a) To exercise general supervision over the administration and enforcement of this chapter and applicable rules and regulations;

(b) To make inspections and investigations, collect samples and carry on research and analyses as may be necessary to carry out this chapter and applicable rules and regulations;

(c) To enter at all reasonable times onto any property other than the interior of a private dwelling to make inspections, conduct investigations or studies or enforce this chapter and applicable rules and regulations;

(d) To enter into contracts, grants or cooperative arrangements with any federal or state agency or subdivision thereof, interstate agency or any other person;

(e) To receive financial and technical assistance from the federal government and other public or private agencies or organizations;

(f) To participate in related programs of the federal government, other states, interstate agencies, or other public or private agencies or organizations;

(g) To establish adequate fiscal controls and accounting procedures to assure proper disbursement of and account for funds appropriated or otherwise necessary to carry out this chapter;

(h) To hold hearings, issue, modify or revoke orders, levy and collect any administrative fine or penalty and to enforce the laws, rules and regulations governing safe drinking water;

(i) To keep any records and make reports with respect to the activities of the department;

(j) To delegate any powers, duties and responsibilities as deemed appropriate to administer this chapter including delegation of any powers and duties regarding administrative enforcement to a designated administrative law judge or hearing officer; and

(k) To perform all acts necessary to carry out this chapter or the federal act.

HISTORY:
Laws, 1976, ch. 452, § 4; Laws, 1997, ch. 389, § 10, eff from and after July 1, 1997.

Editor's Notes —
The section was enacted with a subsection (1), but no subsection (2). The subsection (1) designation has been deleted at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

Cross References —
Regulation of bottled drinking water, see §§ 75-29-801 et seq.

§ 41-26-8. Requirements for construction and operation of public water systems; role of director.

(1) The director shall exercise general supervision over the construction and operation of public water systems throughout the state. The general supervision shall include all of the features of construction and operation of public water systems which do or may affect the sanitary quality or the quantity of the water supply.

(2)(a) No person shall construct or change any community public water system or nontransient, noncommunity public water system until the plans for that construction or change have been submitted to and approved by the director. Plans for the construction or change must be prepared by a professional engineer registered in this state.

(b) In addition, each applicant for a new community public water system or nontransient, noncommunity public water system shall submit an operation and maintenance plan for review and approval by the director. The plan must be approved before beginning construction.

(c) In granting any approval under this section, the director may specify any modifications, conditions or limitations as may be required for the protection of the public health and welfare.

(d) The director may also review the source of the water and the quantity of water to be withdrawn.

(e) Records of construction, including plans and descriptions of existing portions of a public water system, shall be made available to the department upon request.

(f) Each applicant for a new community public water system or nontransient, noncommunity public water system shall submit financial and managerial information as required by the public utilities staff. Following review of that information, the executive director of the public utilities staff shall certify in writing to the director the financial and managerial viability of the system if the executive director determines the system is viable. The director shall not approve the construction until that certification is received.

(g) The director shall not approve any plans for changes to an existing community public water system or nontransient, noncommunity public water system, if the director determines the changes would threaten the viability of the system or if the changes may overload the operational capabilities of the system.

(h) Those public water systems determined by the director to be appropriately providing corrosion control treatment shall effectively operate and maintain the system's water treatment facilities in order to continuously provide the optimum pH of the treated water or optimum dosage of corrosion inhibitor.

(3) Each semipublic water system shall notify the department of its location, a responsible party and the number of connections served. The department shall, to the extent practicable, take appropriate actions to ensure

that records on semipublic water systems are up-to-date. The board may require water well drillers to provide information on wells drilled for use by semipublic water systems. The department shall at least annually collect a sample from each semipublic water system and shall analyze that sample at no cost to the semipublic water system for microbiological contaminants and any other contaminants deemed appropriate by the department. If the department finds levels of contaminants exceeding the Mississippi Primary Drinking Water Standards, the department shall notify the responsible party and shall provide technical assistance to the system to correct the problem. No semipublic water system shall be subject to the penalty provided under Section 41-26-31.

HISTORY:
Laws, 1997, ch. 389, § 3; Laws, 2002, ch. 472, § 1; Laws, 2005, ch. 366, § 1; Laws, 2007, ch. 401, § 1; Laws, 2010, ch. 308, § 1, eff from and after July 1, 2010.

§ 41-26-9. Action by director when contaminant is present in or likely to enter public water system.

The director, upon receipt of information that a contaminant which is present in or is likely to enter a public water system may present an imminent and substantial endangerment to the public health, may take any actions deemed necessary to protect the public health. The actions may include, but shall not be limited to:

(a) Issuing any orders either on the initiative of the director or through a designated administrative law judge or hearing officer as may be necessary to protect the public health of users of the system, including travelers; and

(b) Commencing a civil action for appropriate relief, including a restraining order or permanent or temporary injunction.

HISTORY:
Laws, 1976, ch. 452, § 5; Laws, 1997, ch. 389, § 11, eff from and after July 1, 1997.

§ 41-26-11. Plan for provision of safe drinking water under emergency circumstances.

The director shall develop an adequate plan for the provision of safe drinking water under emergency circumstances. If, in the judgment of the director, emergency circumstances exist in the state for safe drinking water, the director may take any actions deemed necessary to provide safe drinking water where it otherwise would not be available.

HISTORY:
Laws, 1976, ch. 452, § 6; Laws, 1997, ch. 389 § 12, eff from and after July 1, 1997.

§ 41-26-13. Notices of noncompliance, failure to perform monitoring, variances, and exemptions.

(1) A public water system shall, as soon as practicable, notify the county or district health department, the board and the administrator if one (1) of the following conditions exist: (a) the system is not in compliance with the Mississippi Primary Drinking Water Regulations; (b) the system fails to perform monitoring required by regulations adopted by the board; (c) the system is subject to a variance granted for an inability to meet a maximum contaminant level requirement; (d) the system is subject to an exemption; or (e) the system fails to comply with the requirements prescribed by a variance or exemption.

(2) In addition, the system shall provide public notice. The notice shall be provided to the Mississippi State Department of Health at least once every three (3) months, and that public notice shall be published by the department on its Web site. The system shall provide notice that the drinking water quality reports are available on the Mississippi State Department of Health Web site by placing the notice, including the Web site address, in a newspaper of general circulation in the area which is served by the water system, as determined by the director. The notice shall not be placed in the legal section of the newspaper. The notice shall be furnished to the other communications media serving the area as soon as practicable after the discovery of any condition for which the notice is required. If the water bills of a public water system are issued more often than once every three (3) months, the notice shall be included in at least one (1) water bill of the system every three (3) months, and if a public water system issues its water bills less often than once every three (3) months, the notice shall be included in each water bill issued by the system.

HISTORY:

Laws, 1976, ch. 452, § 7; Laws, 1997, ch. 389, § 13; Laws, 2010, ch. 334, § 1, eff from and after July 1, 2010.

RESEARCH REFERENCES

ALR.

Liability of water supplier for damages resulting from furnishing impure water. 54 A.L.R.3d 936.

§ 41-26-14. Cross connection control program; legislative intent; adoption of regulations; certain cross connections designated as low hazard; requirements and deadlines for high hazard and low hazard cross connections; inspections; discontinuance of service for violations; local ordinances regulating cross connections or backflow preventer devices may not be more stringent than provisions of this section.

(1) The department shall develop and implement a cross connection control program in accordance with this section. Before development of the cross connection control program, the department shall consult with the United States Environmental Protection Agency regarding the development of a federal cross connection control program. It is the intent of the Legislature

that any cross connection control program developed and implemented by the department be equivalent to a federal program, unless otherwise provided in this section.

(2)(a) The board shall adopt regulations defining a high hazard cross connection and a low hazard cross connection. The board shall determine which low hazard cross connections pose a very low risk and therefore are below regulatory concern. Those low hazard cross connections posing a very low risk shall be exempt from the requirements of this section and shall not be required to have a backflow preventer device. In addition, the regulations shall specify those backflow preventer devices which are recommended to address both high hazard and low hazard cross connections.

(b) For the purposes of this section, the following cross connections shall be considered as low hazard cross connections posing a very low risk:

(i) Any lawn sprinkler system or lawn irrigation system that is connected to a public water system and was professionally installed, regardless of whether the system is underground or above ground or whether the system has pop-up sprinkler heads;

(ii) Any swimming pool that is connected to a public water system and was professionally installed, or any swimming pool that is connected to a public water system and has a fill line with an anti-siphon air gap;

(iii) Any water fountain or cooler that provides drinking water for human consumption, that is connected to a public water system and was professionally installed;

(iv) Any fire sprinkler system that contains only water or a dry pipe and no chemicals, that is connected to a public water system and was professionally installed; and

(v) Any commercial establishment that is connected to a public water system, that contains no cross connections directly with a dangerous or hazardous substance or material.

(c) For the purposes of this section, any lawn sprinkler system or lawn irrigation system that is connected to a public water system and either injects or stores lawn chemicals or is connected to a wastewater supply shall be considered as high hazard cross connections and not exempt from the requirements of this section; however, the local public water system shall not be required to conduct an on-site inspection to identify any such system under this paragraph (c).

(d) Any regulations that were adopted before April 12, 2001, to implement a cross connection control program shall be void to the extent those regulations are in conflict or inconsistent with this section.

(3) Before December 31, 2000, each public water system shall develop and implement a cross connection control program and shall conduct a survey and on-site visits, as necessary, to locate cross connections within its system. Single family dwellings and multifamily dwellings shall be excluded from the survey, unless the public water system has reason to believe a cross connection exists.

(4) Before June 30, 2001, each property owner identified by the public water system as having a high hazard cross connection shall install a backflow

preventer device. If the property owner already has a backflow preventer device installed and the backflow preventer device functions properly, the public water system shall consider the backflow preventer device approved and shall allow the installed backflow preventer device to remain in place until the backflow preventer device fails to function properly. Additional backflow preventer devices shall not be required for carbonated beverage dispensers if (a) the water supply connection to the carbonated beverage dispenser is protected against backflow by a backflow preventer device conforming to ASSE 1022 or by an air gap, and (b) the backflow preventer device and the piping downstream from the device are not affected by carbon dioxide gas.

(5) Before June 30, 2004, each property owner identified by the public water system as having a low hazard cross connection shall install a backflow preventer device. This requirement does not apply to any low hazard cross connection that poses a very low risk. If the property owner already has a backflow preventer device installed and the backflow preventer device functions properly, the public water system shall consider the backflow preventer device approved and shall allow the installed backflow preventer device to remain in place until the backflow preventer device fails to function properly.

(6) Each high hazard backflow preventer device shall be inspected and tested at least annually. If a high hazard backflow preventer device fails to function properly, the property owner shall have the backflow preventer device repaired and retested or shall install a new approved backflow preventer device within thirty (30) days of the initial test. If a low hazard backflow preventer device fails to function properly, the property owner shall have the backflow preventer device repaired or shall install a new backflow preventer device within ninety (90) days after the date the backflow preventer device first fails to function properly.

(7) All inspection and testing of backflow preventer devices under this section shall be conducted by a certified tester, unless otherwise provided in the regulations of the board. Certified backflow preventer device testers shall be licensed by the department under those conditions as the department deems appropriate.

(8) If a property owner fails to install a backflow preventer device or fails to have a backflow preventer device tested as required by this section, the public water system may discontinue service to that property owner until the failure is corrected.

(9) After the dates specified in subsections (4) and (5) of this section, it is unlawful to install or allow the installation or maintenance of any cross connection, auxiliary intake or bypass, unless the source and quality of water from the auxiliary supply, the method of connection and the use and operation of that cross connection, auxiliary intake or bypass has been approved by the director. However, this subsection does not authorize the director to modify, supersede or suspend any provision of this section regarding backflow preventer devices.

(10)(a) A municipality, county or public water system shall not adopt or implement any ordinance, rule, regulation, standard or policy regarding cross connections or backflow preventer devices that is more stringent or extensive in scope, coverage or effect than the provisions of this section or any rules or regulations adopted by the board to implement this section, or is in conflict or inconsistent with the provisions of this section or any rules or regulations adopted by the board to implement this section. Any such ordinance, rule, regulation, standard or policy regarding cross connections or backflow preventer devices that was adopted before April 12, 2001, is void to the extent that it is more stringent or extensive in scope, coverage or effect than the provisions of this section or any rules or regulations adopted by the board to implement this section, or is in conflict or inconsistent with the provisions of this section or any rules or regulations adopted by the board to implement this section.

(b) If any municipality or county adopts or has previously adopted a building code, plumbing code or any other code that contains requirements or standards regarding cross connections or backflow preventer devices, the municipality or county or any public water system operating in the municipality or county shall not implement or enforce any such requirements or standards that are more stringent or extensive in scope, coverage or effect than the provisions of this section or any rules or regulations adopted by the board to implement this section, or are in conflict or inconsistent with the provisions of this section or any rules or regulations adopted by the board to implement this section.

HISTORY:

Laws, 2000, ch. 573, § 1; Laws, 2001, ch. 587, § 1, eff from and after passage (approved Apr. 12, 2001).

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected publishing errors in subsections (2)(d) and (10)(a). The words "before the effective date of House Bill No. 692, 2001 Regular Session" were changed to "before April 12, 2001." The Joint Committee ratified the correction at its May 16, 2002 meeting.

§ 41-26-15. Prohibited acts.

The following acts and the causing of these acts are prohibited:

(a) Failure by a supplier of water to comply with the requirements of Section 41-26-13, or dissemination by that supplier of any false or misleading information with respect to notices required under Section 41-26-13, or with respect to remedial actions being undertaken to achieve compliance with Mississippi Primary Drinking Water Regulations;

(b) Failure by a supplier of water to comply with this chapter or applicable rules or regulations promulgated under this chapter, or with conditions of any variances or exemptions granted under this chapter;

(c) Failure by any person to comply with any order issued by the director, administrative law judge or hearing officer under this chapter;

(d) Refusal by a supplier of water to allow an authorized representative of the department to inspect any public water system;

(e) Contamination of a public water system;

(f) Intentionally damaging any pipe or other part of a public water system;

(g) Discharge of sewage or other waste at any location that may come into contact with a public water system intake, unless that discharge is permitted or authorized by a state or federal agency; and

(h) Abandonment or other termination of water services to more than fifty percent (50%) of the customers of a system by a supplier of water, without providing at least sixty (60) days' notice to all customers served by the public water system and the department.

HISTORY:

Laws, 1976, ch. 452, § 8; Laws, 1997, ch. 389, § 14; Laws, 2000, ch. 573, § 2, eff from and after passage (approved May 20, 2000).

RESEARCH REFERENCES

ALR.

Validity, construction, and effect of statute, ordinance, or other measure involving chemical treatment of public water supply. 43 A.L.R.2d 453.

Validity and construction of anti-water pollution statutes or ordinances. 32 A.L.R.3d 215.

Liability of water supplier for damages resulting from furnishing impure water. 54 A.L.R.3d 936.

§ 41-26-17. Violation of chapter—complaint.

(1) When the director or an employee of the department has reason to believe that a violation of this chapter, a rule or regulation promulgated under this chapter, any order of the director, or any limitation or condition of an approval has occurred, the director shall cause a written complaint to be served upon the alleged violator. The complaint shall specify the provisions of this chapter, rule or regulation, order or approval alleged to be violated and the facts alleged to constitute that violation. The complaint shall also require the alleged violator to appear before the director at a time and place specified in the notice to answer the charges. The time of appearance shall be at least five (5) days from the date of the service of the complaint.

(2) Except as provided in subsection (1) of this section, upon the filing of a complaint by any person alleging a violation of this chapter, a rule or regulation promulgated under this chapter, any order of the director or any limitation or condition of an approval, the director shall conduct an investigation of the complaint. Any complaint filed under this subsection shall be in writing, signed by the person making the allegation and filed with the director. If the director finds a basis for the complaint, the director shall cause written notice of the complaint, specifying the charges or allegations made, to be served upon the alleged violator. The notice shall also require the alleged violator to appear before the director at a time and place specified in the notice to answer the charges. The time of appearance shall be at least five (5) days from the date of the service of the complaint. If the director finds no basis for the complaint, the director shall dismiss the complaint.

(3) The director shall afford an opportunity for a hearing to the alleged violator at the time and place specified in the notice. On the basis of the facts determined at the hearing, the presiding official shall make findings of fact and

conclusions of law and enter an order. The director shall give written notice of that order to the alleged violator and to any other persons appearing at the hearing or making written request for notice of the order. In addition to ordering corrections in the operation or maintenance of a public water system, and other measures which, in the opinion of the director, are necessary to ensure compliance with this chapter or the federal act or to safeguard the public health, the director may assess penalties as provided in Section 41-26-31.

(4) Except as otherwise expressly provided, any notice or other instrument issued by or under authority of this chapter may be served on any person affected and proof of that service may be made in like manner as in case of service of a summons in a civil action. Proof of service shall be filed in the office of the director. In addition, service may be made by mailing a copy of the notice, order or other instrument by certified mail, directed to the person affected at the person's last known post office address as shown by the files or records of the department, and proof thereof may be made by the affidavit of the person who did the mailing, filed in the office of the director.

HISTORY:
Laws, 1976, ch. 452, § 9; Laws, 1997, ch. 389, § 15, eff from and after July 1, 1997.

RESEARCH REFERENCES

ALR.
Pollution control: preliminary mandatory injunction to prevent, correct, or reduce effects of polluting practices. 49 A.L.R.3d 1239.

§ 41-26-19. Powers of director; hearings under chapter.

(1)(a) Any hearing under this chapter may be conducted by the director or an administrative law judge or an administrative hearing officer designated by the director. The presiding official may conduct the hearings in the name of the director at any time and place as conditions and circumstances may warrant. The presiding official shall have the record of any hearing prepared which the official has conducted for the director.

(b) In any pending matters under this chapter, the director shall have the same powers to subpoena witnesses, administer oaths, examine witnesses under oath and conduct the hearing, as is now vested by law in the Mississippi Public Service Commission, for hearings before it. In addition, the director may issue all subpoenas, both at the instance of the petitioner and of the director. At any hearing the director, the staff of the department, any other petitioner or any other interested person, may offer proof, present witnesses and submit evidence. At the discretion of the presiding official, comments may be taken from members of the public who are subscribers of the public water system. Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, the circuit court shall have jurisdiction, upon application of the director or the director's representative, to issue an order requiring that person to appear and testify or produce evidence as the case may require and any failure to obey that order of the court may be punished by the court as contempt. Failure to appear at any hearing, without prior authorization to do so from the director or the director's representative, may result in the director finding the alleged violator guilty of the charges complained of by default. An order may be entered, including the assessment of a penalty, which, in the opinion of the director, will best further the purposes of this chapter.

(2) All hearings shall be recorded either by a court reporter or by tape or mechanical recorders and subject to transcription upon order of the director or any interested person. If the request for transcription originates with an interested person, that person shall pay the cost prior to the production of the transcription.

HISTORY:

Laws, 1976, ch. 452, § 10; Laws, 1997, ch. 389, § 16, eff from and after July 1, 1997.

§ 41-26-21. Final order; cost bonds; appeal.

Following the hearing, the presiding official shall enter an order which shall become a final order of the director, unless the petitioner or other interested person appearing at the hearing, shall, within ten (10) days after the date of the final order was made, appeal to the Chancery Court of the First Judicial District of Hinds County or the chancery court of the county of the situs, in whole or in part. The petitioner or other interested person shall give a cost bond with sufficient sureties, payable to the state in the sum of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), to be fixed in the order appealed from. The cost bond shall be filed with and approved by the director, who shall certify the bond, together with a certified copy of the record of the hearing in the matter, to the chancery court, which shall be the record of the cause. Except as provided in this section, an appeal to the chancery court as provided in this section shall not stay the execution of a final order of the director.

Any person who is aggrieved by any final order or other decision issued under this section may, within ten (10) days after the date of that order or decision, petition the Chancery Court of the First Judicial District of Hinds County or the chancery court of the county of the situs, in whole or in part, for an appeal with supersedeas. The chancellor shall grant a hearing on that petition. Upon good cause shown, the chancellor may grant the appeal with supersedeas. The appellant shall be required to post a bond with sufficient sureties according to law in an amount to be determined by the chancellor. Appeals shall be considered only upon the record as made at the hearing before the presiding official. The chancery court shall always be deemed open for hearing of appeals and the chancellor may hear the appeal in termtime or in vacation at any place in the chancellor's district. The appeal shall have precedence over all civil cases, except election contests. The chancery court shall review all questions of law and of fact. If no prejudicial error is found, the matter shall be affirmed and remanded to the director for enforcement. If a prejudicial error is found, the matter shall be reversed and the chancery court shall remand the matter to the director for appropriate action as may be indicated or necessary under the circumstances. Appeals may be taken from the chancery court to the Supreme Court in the manner as now required by law, but if a supersedeas is desired by the party appealing to the chancery court, that party may apply for the supersedeas to the chancellor, who shall award a writ of supersedeas, without additional bond, if in the chancellor's judgment material damage is not likely to result. If material damage is likely to result, the chancellor shall require a supersedeas bond as deemed proper, which shall be liable to the state for any damage.

HISTORY:

Laws, 1976, ch. 452, § 11; Laws, 1997, ch. 389, § 17, eff from and after July 1, 1997.

§ 41-26-23. Establishment of Drinking Water Quality Analysis Fund [Repealed effective July 1, 2020].

(1) There is created in the State Treasury a fund to be designated as the "Drinking Water Quality Analysis Fund." The fund shall be treated as a special trust fund. Interest earned on the principal in the fund shall be credited by the Treasurer to the fund. The fund may receive monies from any available public or private source, including fees, proceeds and grants. The department shall expend or utilize monies in the fund to pay all reasonable direct and indirect costs of water quality analysis and related activities as required by the federal Safe Drinking Water Act, as amended. Monies in the fund at the end of the fiscal year shall be retained in the fund for use in the succeeding fiscal year. Except as provided in subsection (5) of this section, if the annual fees collected exceed the cost of administering the water quality analysis program in that fiscal year, the excess shall be applied to the cost of administering the program in the succeeding fiscal year. In the succeeding fiscal year, the total to be collected from fees shall be reduced by the excess retained in the fund and the assessment rates shall be adjusted proportionately.

(2) The department annually shall assess and collect fees for water quality analysis and related activities as required by the federal Safe Drinking Water Act, as amended, which shall not exceed Three Dollars ($3.00) per connection or Forty Thousand Dollars ($40,000.00) per system, whichever is less. Any increase in the fees charged by the department under this subsection shall be in accordance with the provisions of Section 41-3-65. The department annually shall adopt by rule, in accordance with the Administrative Procedures Law and following a public hearing, a fee schedule to cover all reasonable direct and indirect costs of water quality analysis and related activities as required by the federal Safe Drinking Water Act, as amended. In adopting a fee schedule, the department shall consider the recommendations of the advisory committee created in this section, if those recommendations are made in a timely manner as provided.

(3) An advisory committee is created to study the program needs and costs for the implementation of the water quality analysis program and to conduct

an annual review of the needs and costs of administering that program. The annual review shall include an independent recommendation on an equitable fee schedule for the succeeding fiscal year. Each annual review report shall be due to the department by May 1. The advisory committee shall consist of one (1) member appointed by the Mississippi Rural Water Association, one (1) member appointed by the Mississippi Municipal Association, one (1) member appointed by the Mississippi Association of Supervisors and one (1) member appointed by the Mississippi Water and Pollution Control Operators Association, Inc.

(4) All suppliers of water for which water quality analysis and related activities as required by the federal Safe Drinking Water Act, as amended, are performed by the State Department of Health shall pay the water quality analysis fee within forty-five (45) days following receipt of an invoice from the department. In the discretion of the department, any supplier of water required to pay the fee shall be liable for a penalty equal to a maximum of two (2) times the amount of fees due and payable plus an amount necessary to reimburse the costs of delinquent fee collection for failure to pay the fee within ninety (90) days following the receipt of the invoice. Any person making sales to customers of water for residential, noncommercial or nonagricultural use and who recovers the fee required by this section or any portion thereof from any customer shall indicate on each statement rendered to customers that these fees are for water quality analyses required by the federal government under the Safe Drinking Water Act, as amended.

(5) There is created within the Drinking Water Quality Analysis Fund an equipment capital expenditure account, hereinafter referred to as the "account." The department may transfer any excess fees, not exceeding ten percent (10%) of the total fees assessed under this section, to the account. The balance in the account shall not exceed Five Hundred Thousand Dollars ($500,000.00). Funds in the account shall be used by the department, as appropriated by the Legislature, to defray the costs of purchasing new equipment or repairing existing equipment for the analysis of drinking water.

HISTORY:

Laws, 1997, ch. 523, § 1; Laws, 2006, ch. 409, § 1; Laws, 2016, ch. 510, § 6, eff from and after July 1, 2016.

Editor's Notes —

This section was also codified by Section 4 of ch. 389, Laws of 1997, effective July 1, 1997.

Laws of 2016, ch. 510, § 65 provides:

"SECTION 65. This act shall stand repealed on July 1, 2020."

Federal Aspects—

Federal Safe Drinking Water Act, see 42 USCS §§ 300f et seq.

§ 41-26-25. Creation of Public Water System Assistance Fund.

(1)(a) There is created in the State Treasury a fund to be designated as the "Public Water System Assistance Fund." The fund shall contain two (2) accounts, designated as the "Public Water System Technical Assistance Account" and the "Public Water Systems Bond Operations Account."

(b) Monies in the Public Water System Technical Assistance Account shall be used to pay the reasonable direct and indirect costs of providing technical assistance to public water systems under the program established in Section 41-26-5. Monies in the Public Water Systems Bond Operations Account shall be used as ordered by the court under Section 41-26-31.

(2) Expenditures may be made from the fund upon requisition by the director.

(3) The fund shall be treated as a special trust fund. Interest earned on the principal shall be credited by the Treasurer to the fund.

(4) The fund may receive monies from any available public or private source, including, but not limited to, collection of fines, penalties or fees, proceeds from bond or other financial security forfeitures, interest, grants, taxes, public and private donations, petroleum violation escrow funds or refunds, and appropriated funds.

HISTORY:

Laws, 1997, ch. 389, § 5, eff from and after July 1, 1997.

Cross References —

Proceeds of any forfeiture of bonds required under § 41-26-31 to be deposited in the Public Water Systems Bond Operations Account, see § 41-26-31.

Penalties and fines collected under § 41-26-31(1) to be deposited in the Public Water Systems Technical Assistance Account, see § 41-26-31.

§ 41-26-31. Enforcement of chapter; civil penalties.

(1) If the director finds any person guilty of a violation of this chapter, any rule or regulation or written order of the director or any condition or limitation of an approval, the director may assess and levy a civil penalty of not more than Twenty-five Thousand Dollars ($25,000.00) for each violation, except as provided in Section 41-26-8(3). Each day of a continuing violation is a separate violation. Any penalty shall be assessed and levied by the director after a hearing as provided in this chapter. Appeals from the imposition of the civil penalty may be taken to the Chancery Court of the First Judicial District of Hinds County or the chancery court of the county of the situs, in whole or in part, as provided in Section 41-26-15. If the appellant desires to stay the execution of a civil penalty assessed under this section, the appellant shall give bond with sufficient sureties of one or more guaranty or surety companies authorized to do business in this state, payable to the State of Mississippi, in an amount equal to double the amount of any civil penalty assessed by the director, as to which the stay of execution is desired. If the judgment is affirmed, the appellant shall pay all costs of the assessment entered against the appellant.

(2) In addition to or in lieu of the penalty provided in subsection (1) of this section, the director may institute and maintain in the name of the state any proceedings necessary or appropriate to enforce this chapter, any rule or regulation or written order of the director or any condition or limitation of an approval. The proceedings may be filed and heard in the appropriate circuit, chancery, county or justice court of the county in which venue may lie, or in the Circuit, Chancery or County Court of the First Judicial District of Hinds County, as the case may be. The director may obtain mandatory or prohibitory injunctive relief, either temporary or permanent. In cases of imminent and

substantial hazard or endangerment, it shall not be necessary that the state plead or prove: (a) that irreparable damage would result if the injunction did not issue; (b) that there is no adequate remedy at law; or (c) that a written order has first been issued for the alleged violation.

(3) In determining the amount of any penalty under this section, the director shall consider at a minimum:

(a) The willfulness of the violation;

(b) Costs of restoration and abatement;

(c) Economic benefit as a result of noncompliance;

(d) The seriousness of the violation, including any harm or hazard to the public health and welfare; and

(e) Past performance history.

(4)(a) The owner of any public water system found in violation of this chapter may submit to the director a plan for:

(i) The physical consolidation of the system with one or more other viable public water systems;

(ii) The consolidation of significant management and administrative functions of the system with one or more other viable public water systems or contract or satellite management of the system; or

(iii) The transfer of ownership of the system.

(b) If the director approves the plan and the plan is fully implemented as determined by the director, the director shall waive any penalty assessed under this section for a violation identified in the approved plan before the date on which the action specified in the approved plan was completed.

(5)(a) In addition to or in lieu of any other penalty imposed under this section, the director may require the owner of any public water system found in violation to provide a performance bond or other acceptable financial security instrument including, but not limited to, cash, negotiable bonds of the United States government or the state, or negotiable certificates of deposit or a letter of credit of any bank organized or transacting business in the state and insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or a similar federal banking or savings and loan insurance organization to the department. The bond or financial security must be approved by the director. The purpose of the bond or other financial security shall be the protection of the health and welfare of the customers of the system. The board shall establish by regulation the acceptable forms of financial security and the amount of financial security required for the various types and sizes of facilities. The director shall notify the owner, in writing, of the form and amount of security required.

(b) The director may petition the Chancery Court of the First Judicial District of Hinds County for forfeiture of the bond or other financial security, if the director determines that:

(i) The continued operation or lack of operation of the system covered by this section represents a threat to the public health and welfare;

(ii) All reasonable and practical efforts under the circumstances have been made to obtain corrective actions from the violators; and

(iii) It does not appear that corrective actions can or will be taken within an appropriate time as determined by the director, or it appears the facility has been abandoned.

(c) The proceeds of any forfeiture shall be deposited in the Public Water Systems Bond Operations Account of the Public Water Systems Assistance Fund and shall be used as ordered by the court to address or correct the noncompliance at the system. The proceeds shall be in addition to any other funds otherwise appropriated to the department and may be expended under the authority of this section without additional action of the Legislature or the Department of Finance and Administration.

(d) If the court finds that a system has been abandoned or that services of a system have been terminated, the court may enter any orders regarding continued operations of that system as it deems necessary to protect the public health and welfare.

(6)(a) Any penalty assessed by the director under this section shall be due and payable within thirty (30) days after notification of the violator of the order, and shall be due and payable jointly or severally, as the order may require or allow.

(b) If the assessed penalty is not paid within the thirty (30) days, or within any additional time as the director may allow, the director may file suit in the Circuit Court of the First Judicial District of Hinds County or any other court with appropriate jurisdiction to enforce the order, collect the penalty and recover reasonable attorney's fees and all court costs.

(c) A copy of the administrative order shall be sufficient proof as to the decision of the director.

(7) All fines and penalties recovered or collected by the director under subsection (1) of this section shall be deposited in the Public Water Systems Technical Assistance Account of the Public Water Systems Assistance Fund.

HISTORY:

Laws, 1997, ch. 389, § 6, eff from and after July 1, 1997.

Cross References —

Exemption of semipublic water system from penalty provided under this section, see § 41-26-8.

Public Water Systems Band Operations Account of the Public Water Systems Assistance Fund, see § 41-26-25.

OPINIONS OF THE ATTORNEY GENERAL

Under appropriate circumstances, a professional engineer, or any other person, operating under and subject to the provisions of the Safe Water Act or the regulations adopted in furtherance of that Act, may be found to be a violator and subjected to the penalties prescribed in this section. 2003 Miss. Op. Att'y Gen. 598.

COMMUNITY PUBLIC WATER SYSTEM

Sec.
41-26-101. Management training for community public water system board members [Repealed effective July 1, 2020].
41-26-103. Repealed.

§ 41-26-101. Management training for community public water system board members [Repealed effective July 1, 2020].

(1) Each member elected or reelected after June 30, 1998, to serve on a governing board of any community public water system, except systems operated by municipalities with a population greater than ten thousand (10,000), shall attend a minimum of eight (8) hours of management training within two (2) years following the election of that board member. Any member failing to complete the management training within two (2) years after his election shall be subject to removal from the board by the remaining members. If a board member has undergone training and is reelected to the board, that board member shall not be required to attend training as provided by this subsection.

(2) The management training shall be organized by the State Department of Health, in cooperation with the Mississippi Rural Water Association and other organizations. The management training shall include information on water system management and financing, rate setting and structures, operations and maintenance, applicable laws and regulations, ethics, the duties and responsibilities of a board member and other information deemed necessary by the department after consultation with the association and other organizations. The department shall develop and provide all training materials. The department may charge a fee not to exceed Seventy-five Dollars ($75.00) per member to defray the actual costs of providing the materials and training. These costs shall be reimbursed to the board member as an expense of the community public water system. Any increase in the fee charged by the department under this subsection shall be in accordance with the provisions of Section 41-3-65.

(3) To avoid board members having to interfere with their jobs or employment, management training sessions may be divided into segments and, to the greatest extent possible, shall be scheduled for evening sessions. The department shall conduct management training on a regional basis and shall use community college or other public facilities for the convenience of board members.

(4) The department may make exceptions to and grant exemptions and variances to the requirements of this section for good cause shown.

HISTORY:

Laws, 1997, ch. 392, § 1; Laws, 1998, ch. 569, § 2; Laws, 2007, ch. 374, § 1; Laws, 2016, ch. 510, § 7, eff from and after July 1, 2016.

Editor's Notes —

Laws of 2016, ch. 510, § 65 provides:

"SECTION 65. This act shall stand repealed on July 1, 2020."

§ 41-26-103. Repealed.

Repealed by Laws 2002, ch. 383, § 1, effective July 1, 2003.

Laws, 1999, ch. 472, § 1; Laws, 2002, ch. 383, § 1, eff from and after July 1, 2002.

Editor's Notes —

Former 41-26-103 was entitled "Department of Health to identify potentially nonviable community public water systems; technical assistance; notice to Public Utilities Staff if assistance refused; financial and/or managerial review."

CHAPTER 27.

MOSQUITO CONTROL

Article 1. County Mosquito Control Commissions. 41-27-1
Article 3. Rice Field Mosquito Control Law. 41-27-101

ARTICLE 1.

COUNTY MOSQUITO CONTROL COMMISSIONS.

Sec.
41-27-1. County mosquito control commission authorized.
41-27-3. Director of State Board of Health to be member.
41-27-5. Duties of State Board of Health.
41-27-7. Outside aid may be accepted.
41-27-9. Powers of commission.
41-27-11. Plans and estimates of cost to be filed annually.
41-27-13. Source of funds.
41-27-15. How funds are to be expended.
41-27-17. Annual report to be filed.
41-27-19. Two counties may act jointly.
41-27-21. Fiscal management where two or more counties act jointly.
41-27-23. Boards of supervisors to indicate amount of funds to be applied to control work; notice to other counties; withdrawal by dissatisfied county.
41-27-25. Approval and allowance for payment of expenses and claims; forwarding of copies of minute entries of approved claims.
41-27-27. Submission of list of claims to boards of supervisors; issuance of county warrants.
41-27-29. Duties of county mosquito control commissions and joint mosquito control commission.
41-27-31. Elimination of county in default from membership of joint mosquito control commission.
41-27-33. Existing laws not affected.

§ 41-27-1. County mosquito control commission authorized.

The county board of supervisors in any county of this state may, with the approval of the state health officer, appoint three (3) persons who will constitute a board of commissioners of said county to be known as "The ________ County Mosquito Control Commission," (inserting the name of the county in and for which the commissioners are appointed). The commissioners first so appointed in any county shall hold office respectively for the term of one (1), two (2) and three (3) years, as indicated and fixed in the order of appointment. All such commissioners, after the first appointment, shall be so appointed for the full term of three (3) years. Vacancies in the said commission occurring by resignation or otherwise shall be filled by the county board of supervisors with the approval of the state health officer, and the persons appointed to fill such vacancies shall be appointed for the unexpired term only. Such persons so appointed, when duly qualified, constituting such commission, and their successors are hereby created a body politic, with power to sue and be sued, to use a common seal and make bylaws.

The members of any such commission shall serve without compensation, except that the necessary expenses of each commissioner for actual attendance of meetings and a per diem as provided in Section 25-3-69 shall be allowed and paid. No commissioner shall be paid per diem in excess of two (2) meetings per month. The president and secretary shall furnish bond in the amount of Five Thousand Dollars ($5,000.00) each, the fee for same to be charged to available funds obtained for the work herein mentioned. No persons employed by the said commission shall be a member thereof. Before entering upon the duties of his office each commissioner shall take and subscribe an oath or affirmation before the clerk of the county in and for which he is appointed, to faithfully and impartially perform the duties of his office, which oath or affirmation shall be filed with the clerk of the county wherein the commission of which he is a member is appointed. Every such commission shall annually choose from among its members a president and treasurer, and employ a director who is trained in mosquito control operations, and whose duty it shall be to direct the work of the commission as its executive. Every such commission shall employ a clerk or secretary, and such other help as it may deem necessary to carry out the purposes of this article. It may also determine the duties and compensation of such employees, and make all rules and regulations respecting the same.

It shall be the duty of the county board of supervisors in each county to provide such commission with a suitable office where its meetings may be held, its maps, plans, documents, records, and accounts shall be kept, and office work carried on. The commission shall hold monthly meetings, and not less than two (2) members shall constitute a quorum.

HISTORY:

Codes, 1930, § 4942, § 7097; Laws, 1928, ch. 190; Laws, 1983, ch. 547, eff from and after October 1, 1983.

Cross References —

Vermin eradication programs in connection with solid wastes disposal facilities, see § 17-17-19.

Jurisdiction and powers of board of supervisors, generally, see § 19-3-41.

Rice field mosquito control see §§ 41-27-101 et seq.

OPINIONS OF THE ATTORNEY GENERAL

A municipality may perform the functions given to mosquito control commissions created by counties. 2003 Miss. Op. Att'y Gen. 408.

RESEARCH REFERENCES

Am. Jur.

39 Am. Jur. 2d, Health § 52.

§ 41-27-3. Director of State Board of Health to be member.

The state health officer shall be a member ex-officio of each county mosquito control commission and shall co-operate with them for the effective carrying out of their plans and work. The said state health officer shall serve without compensation, except that the necessary expenses actually incurred by him in the attendance of meetings of said commissions shall be allowed and paid.

HISTORY:
Codes, 1930, § 4943; 1942, § 7098; Laws, 1928, ch. 190.

§ 41-27-5. Duties of State Board of Health.

The State Board of Health, or its representative, shall, upon request of a county mosquito control commission, furnish the said commission with such surveys, maps, information, and advice as may be available for the prosecution of the work, or, as in its opinion, will be of advantage in connection therewith. The expenses of surveys shall be paid, in whole or in part, by the said commission.

HISTORY:
Codes, 1930, § 4943; 1942, § 7098; Laws, 1928, ch. 190.

§ 41-27-7. Outside aid may be accepted.

The county board of supervisors and the county mosquito control commission, may with the approval of the state health officer receive and accept any aid whatsoever from any source calculated to further the success of a plan or plans based on this article.

HISTORY:
Codes, 1930, § 4945; 1942, § 7100; Laws, 1928, ch. 190.

§ 41-27-9. Powers of commission.

Every such county mosquito control commission shall have the power to eliminate all breeding and producing places of mosquitoes within the county where it is appointed, and to do and perform all acts and to carry out all plans which in its opinion and judgment may be necessary or proper for the survey and elimination of breeding and producing places of mosquitoes or which will tend to exterminate mosquitoes within said county.

In addition to its primary responsibility for mosquito control, each commission shall also have the power and authority within its discretion and capability to provide services to any member county or any municipality within a member county on a one (1) time or continuing basis for the control and elimination of other pests of a public health or annoyance nature on any public property belonging to such county or municipality; provided, however, that the board of supervisors of a county or a governing body of a municipality located in a member county may request such services for specified private property by adoption of an order spread upon the minutes of such board or governing body stating that such services are necessary in the interest of public health and setting forth the facts upon which such finding is based. The actual cost of such services shall be paid in full by the county or municipality requesting same. All claims arising hereunder shall be billed directly to the requesting county or municipality and shall be processed by such county or municipality under normal claims procedure.

HISTORY:
Codes, 1930, § 4946; 1942, § 7101; Laws, 1928, ch. 190; Laws, 1975, ch. 417, eff from and after passage (approved March 26, 1975).

Cross References —
Pesticide Law of 1975, see §§ 69-23-1 et seq.
Pesticide Application Law of 1975, see §§ 69-23-101 et seq.

§ 41-27-11. Plans and estimates of cost to be filed annually.

Each county mosquito control commission shall, on or before the first day of November in each and every year, file with the state health officer a detailed estimate of the moneys required for the ensuing year, and a plan of the work to be done and the methods to be employed. The said state health officer shall have the power to approve, modify, or alter the said estimates, plans and methods. The estimate, plan and method finally approved by him shall be forwarded to the county board of supervisors in each county on or before the first day of December following its receipt.

HISTORY:
Codes, 1930, § 4947; 1942, § 7102; Laws, 1928, ch. 190.

§ 41-27-13. Source of funds.

The county board of supervisors of each county, or other body having control of the finances thereof, may include the amount of money, approved by the County Mosquito Control Commission and the State Health Officer, annually in the general fund levy.

HISTORY:
Codes, 1930, § 4948; 1942, § 7103; Laws, 1928, ch. 190; Laws, 1964, 1st Ex. Sess. ch. 16; Laws, 1985, ch. 536, § 9; Laws, 1986, ch. 400, § 24, eff from and after October 1, 1986.

Cross References —
Local ad valorem tax levies, generally, see §§ 27-39-301 et seq.

§ 41-27-15. How funds are to be expended.

The moneys so raised, or so much thereof as may be required, may be paid from time to time for the operations, work, materials and labor of the county mosquito control commission, duly signed and approved by the president and secretary thereof by order of the board of supervisors.

HISTORY:
Codes, 1930, § 4949; 1942, § 7104; Laws, 1928, ch. 190.

§ 41-27-17. Annual report to be filed.

It shall be the duty of each county mosquito control commission annually, on or before the 20th day of January in each year, to submit to the state health officer and the county board of supervisors in its respective county, a report setting forth the amount of moneys expended during the previous year, the methods employed, the work accomplished, and any other information which, in the judgment of the board of supervisors, may seem pertinent.

HISTORY:
Codes, 1930, § 4950; 1942, § 7105; Laws, 1928, ch. 190.

§ 41-27-19. Two counties may act jointly.

Two or more counties may combine for the purpose of carrying out the provisions of this article in the respective counties, each county retaining all rights set forth in this article. The commissioners in the counties combined may enter into agreement to employ for purposes of economy, the same director and other personnel for the work of the commission in the counties so combined, all expenses, including salaries, labor, material, and the like being paid by the county in which the work is performed.

HISTORY:
Codes, 1930, § 4944; 1942, § 7099; Laws, 1928, ch. 190.

§ 41-27-21. Fiscal management where two or more counties act jointly.

When two or more counties act jointly under the mosquito control provisions of this article, especially under the provisions of Section 41-27-19, the fiscal control thereof, including the apportionment of funds and the payment of expenses in connection with such work, shall be made as provided in Sections 41-27-23 through 41-27-31.

HISTORY:
Codes, 1942, § 7099-01; Laws, 1964, 1st Ex. Sess. ch. 15, § 1, eff from and after passage (approved July 14, 1964).

§ 41-27-23. Boards of supervisors to indicate amount of funds to be applied to control work; notice to other counties; withdrawal by dissatisfied county.

The board of supervisors of each county so combined in such joint agreement shall, at the time of making and approving the budget of such county for the ensuing year, clearly state the amount of funds to be applied to mosquito control work under the authority of such joint agreement. It shall be the duty of the clerk of each board of supervisors, upon the fixing and approving of such budget, to notify by letter addressed to the presidents of the boards of supervisors of each other county included in such joint activity the amount provided for such mosquito control work in said budget. In event any county included in such joint activity by its board of supervisors should be dissatisfied with the amount of funds allocated by any other county within such group for the aforesaid purpose, such county shall have the right, by order spread upon its minutes and a copy thereof mailed to the president of the board of supervisors of each other county in such joint agreement, of the withdrawal of such dissatisfied county from said agreement and, insofar as such dissatisfied county shall be concerned, the said agreement shall be terminated.

HISTORY:
Codes, 1942, § 7099-02; Laws, 1964, 1st Ex. Sess. ch. 15, § 2, eff from and after passage (approved July 14, 1964).

§ 41-27-25. Approval and allowance for payment of expenses and claims; forwarding of copies of minute entries of approved claims.

On or before the first day of each month following such agreement, and as long as the agreement remains in effect, the county mosquito control commission for each of the counties in such joint agreement shall meet and approve and allow for payment of all expenses, including salaries, labor, material, and the like to be paid by the county in which the work for such claims was done or performed and for which such materials were purchased during the month. The claims so approved for payment shall be entered upon the minutes of such county mosquito control commission and a copy thereof, certified by either the president or secretary of such county mosquito control commission, shall be mailed to the clerk of the board of supervisors of the county for which such county mosquito control commission was appointed, and a copy thereof mailed to the president of the board of supervisors and the president of the county mosquito control commission appointed and acting for the other counties in said agreement.

HISTORY:
Codes, 1942, § 7099-03; Laws, 1964, 1st Ex. Sess. ch. 15, § 3, eff from and after passage (approved July 14, 1964).

§ 41-27-27. Submission of list of claims to boards of supervisors; issuance of county warrants.

Upon receipt of a certified copy of such approved list of claims and expenses, and at the time when other claims are considered by the several boards of supervisors of the counties in such agreement, the clerks of such boards of supervisors shall submit such list of approved claims to such boards of supervisors for their approval, and a county warrant shall be ordered issued, payable to the president and secretary of the joint, or combined, mosquito control commission of such counties.

HISTORY:
Codes, 1942, § 7099-04; Laws, 1964, 1st Ex. Sess. ch. 15, § 4, eff from and after passage (approved July 14, 1964).

§ 41-27-29. Duties of county mosquito control commissions and joint mosquito control commission.

Each county mosquito control commission and the joint mosquito control commission shall be subject to and perform the following:

(a) Upon receipt of the county warrant from each of the cooperating counties, the president and secretary of the joint commission shall cause said warrant to be deposited into the credit of an appropriate fund to be established by said joint commission in a bank which shall be one of the banks then or theretofore designated as a county depository by the board of supervisors of the county in which such bank is located and be disbursed by check or pay warrant over the signatures of the president and secretary for such purposes and only for such purposes as have been approved and allowed as provided in Section 41-27-25. The president and secretary of the joint commission shall be liable on their official bonds for the disbursement of funds as herein provided.

(b) All purchases and expenditures shall be made in accordance with the laws applicable to county purchases and expenditures.

(c) The president and secretary issuing checks or pay warrants shall withhold from wages and salaries paid to each employee each month the required federal income tax, social security tax, and state retirement contribution in accordance with the requirements of the county in which the respective employees reside.

(d) At the end of each month the commission making disbursements shall report and remit the respective amounts so withheld to the chancery clerk of the county in which each employee resides, for incorporation by said clerk in the reports required to be made by said clerk, as county auditor for said county. Said report shall be made in such form as required by the chancery clerk in each county.

(e) The books and all records of each county commission and the joint commission shall be made available and subject to such audits as the respective county auditors of the cooperating counties and the state auditor may deem proper and necessary.

HISTORY:

Codes, 1942, § 7099-05; Laws, 1964, 1st Ex. Sess. ch. 15, § 5, eff from and after passage (approved July 14, 1964).

Editor's Notes —

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

§ 41-27-31. Elimination of county in default from membership of joint mosquito control commission.

In event a county being a member of such joint mosquito control commission shall fail or refuse, within a reasonable time, to issue and deliver to the president of such joint mosquito control commission a valid warrant in payment of its proportionate part of such expenses, the other county or counties being members of such joint mosquito control commission shall have the right, upon written notice to the president of the board of supervisors so in default, to eliminate such default county from membership in such joint mosquito control commission.

HISTORY:

Codes, 1942, § 7099-06; Laws, 1964, 1st Ex. Sess. ch. 15, § 6, eff from and after passage (approved July 14, 1964).

§ 41-27-33. Existing laws not affected.

Nothing in this article shall be construed to alter, amend, modify, or repeal any statute conferring upon state or local boards of health any powers or duties in connection with the extermination of mosquitoes in this state, but this article shall be construed to be supplementary thereto.

HISTORY:
Codes, 1930, § 4951; 1942, § 7106; Laws, 1928, ch. 190.

ARTICLE 3.

RICE FIELD MOSQUITO CONTROL LAW.

Sec.
41-27-101. Declaration of purpose.
41-27-103. County mosquito control commission created.
41-27-105. Members; vacancy.
41-27-107. General powers of commission.
41-27-109. Meeting; officers; bonds.
41-27-111. Compensation.
41-27-113. Commission to investigate feasibility of rice field mosquito control plan; report thereon.
41-27-115. Board of supervisors may require permit for rice production.
41-27-117. Application for permit.
41-27-119. Office facilities for commission; expenses; employees.
41-27-121. Other powers of commission.
41-27-123. Penalty for failure to comply with provisions of article.
41-27-125. Criminal penalty.
41-27-127. Funds for carrying on program; tax on property.
41-27-129. Cooperating with state or federal agency.
41-27-131. Funds shall be placed in special fund in county depository.
41-27-133. Commission may be abolished and program terminated.

§ 41-27-101. Declaration of purpose.

This article is passed with the knowledge and in recognition of the fact that the cultivation of rice systematically breeds a mosquito known as the "rice field mosquito," and that in areas where rice is produced within the State of Mississippi, such mosquitoes have become a nuisance affecting the health and welfare of residents in and around such areas, and this article is designed to provide a method of control and extermination of such mosquitos in rice producing areas.

HISTORY:
Codes, 1942, § 7106-01; Laws, 1954, ch. 288, § 1.

Cross References —
Mosquito control, generally, see §§ 41-27-1 et seq.

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. 2d, Health § 23.

§ 41-27-103. County mosquito control commission created.

When, in any county of this state other than a county bordering on the Mississippi Sound or Gulf of Mexico, a petition, signed by fifty (50) or more qualified electors of such county, shall be presented to the board of supervisors of such county, requesting that a county mosquito control commission for such county be created, the board of supervisors may, within sixty (60) days from the date of the filing of the petition with the clerk of the board, create a county mosquito control commission, and the order creating said county mosquito control commission shall be entered on the minutes of the board of supervisors. The said order shall name three (3) commissioners, one (1) of whom shall be designated as temporary chairman, and shall set a time, date, and place for a meeting to organize said commission. The date of said organizational meeting shall be within sixty (60) days from the date of said order.

HISTORY:
Codes, 1942, §§ 7106-02, 7106-18; Laws, 1954, ch. 288, §§ 2, 18.

§ 41-27-105. Members; vacancy.

There shall be three (3) members of the county mosquito control commission composed of the county agricultural extension agent, the county health officer and a rice producer. The county agricultural extension agent and the county health officer shall serve as permanent members by virtue of their office. The rice producer shall be appointed for a term of three (3) years. The board of supervisors shall have power to fill the vacancy caused by resignation or otherwise of the rice producer.

HISTORY:
Codes, 1942, § 7106-03; Laws, 1954, ch. 288, § 3.

§ 41-27-107. General powers of commission.

When the county mosquito control commission has been created and the members thereof appointed and qualified, the members of the commission and their successors are hereby created and empowered as a body politic, with the power to sue and be sued, to use a common seal, to make bylaws and to do all other acts and things necessary and incident to carrying out the provisions of this article. The commission shall have the power to employ sufficient personnel to carry out the provisions of this article.

HISTORY:
Codes, 1942, § 7106-04; Laws, 1954, ch. 288, § 4.

§ 41-27-109. Meeting; officers; bonds.

The first meeting of the county mosquito control commission shall be held at the time, date and place designated in the order of the board of supervisors creating same. The temporary chairman named by the board of supervisors shall preside at such meeting until a president and secretary shall be elected from among the members of the commission. The secretary shall keep a record of the minutes and proceedings of such commission in a minute book of the commission. The commission shall have power to make such bylaws, rules, and regulations as may be necessary to carry out their duties and the commission shall provide for such regular meetings as are necessary, not to exceed one regular meeting per month, and to make provisions for calling special meetings. Before entering upon their duties as commissioners, such persons so appointed shall enter into a bond with sufficient sureties in the penal sum of Five Thousand Dollars ($5,000.00) conditioned upon the faithful performance of their duties. Said bond must be approved by the board of supervisors.

HISTORY:
Codes, 1942, § 7106-05; Laws, 1954, ch. 288, § 5.

§ 41-27-111. Compensation.

The two (2) members of the county mosquito control commission who serve by virtue of their office shall serve without compensation. The appointed member of the commission shall serve without compensation except that the necessary expenses for actual attendance of the meetings of the commission and a per diem of Five Dollars ($5.00), not to exceed the sum of Twenty-five Dollars ($25.00) for any one (1) month, shall be allowed and paid by the board of supervisors as provided in this article.

HISTORY:
Codes, 1942, § 7106-06; Laws, 1954, ch. 288, § 6.

§ 41-27-113. Commission to investigate feasibility of rice field mosquito control plan; report thereon.

The county mosquito control commission shall, immediately after the organizational meeting, make an investigation to ascertain and determine a feasible method for the control and extermination of rice field mosquitoes within the county. If a feasible method of control and extermination be found, the commission shall make investigations to determine the estimated cost of a mosquito control program on the following basis:

The commission shall, as nearly as possible, ascertain the estimated number of acres of land within the county upon which rice will be planted the next following crop year. The commission shall then estimate the total cost of the poison or other control material which would be needed for the control of rice field mosquitoes on the estimated acreage to be planted, the total cost of application of the poison or other control material, and the cost of administering the program, including salaries of such personnel as may be needed for the efficient administration of the program. When such information has been obtained by the commission, it shall submit a detailed report to the board of supervisors, showing all such costs and information, and the basis for such determination. Such investigation and report shall be submitted to the board of supervisors annually thereafter so long as a mosquito control program is continued, with such annual reports being filed not later than January 1st of each year.

The board of supervisors shall, within sixty (60) days after the commission's report is filed, determine whether or not the mosquito control program described in said report is feasible or practical, considering among other factors the cost involved. If the board of supervisors finds that such a program is not feasible or practical, it shall enter an order abolishing the commission. All expenses incurred by said commission shall be paid by the board of supervisors out of the general county fund.

HISTORY:
Codes, 1942, § 7106-07; Laws, 1954, ch. 288, § 7.

§ 41-27-115. Board of supervisors may require permit for rice production.

If the board of supervisors finds that a mosquito control program is feasible and practical, it shall enter an order requiring all persons, firms, associations and corporations who are to engage in planting or producing rice for the following crop year to obtain permits for such rice production. The fee for such permits shall be based on the total acreage of the applicant which is to be devoted to rice production. The board of supervisors may fix the cost per acre of such permit so that each of the estimated acres of rice to be planted during the following crop year shall bear its pro rata part of the total cost of the program.

HISTORY:
Codes, 1942, § 7106-08; Laws, 1954, ch. 288, § 8.

§ 41-27-117. Application for permit.

The permits and applications therefor, shall be in a form prescribed by the board of supervisors. Each applicant shall, on or before March 31st of each year, make application for said permit at the office of the tax collector of said county. Such application shall include the name or names of the persons applying for such permit, a description of the land to be planted in rice for the following crop year, and such other information as may be required by the board of supervisors. Said application shall contain a statement to the effect that the applicant thereby gives his consent for the application of poison or other mosquito control material to the land to be planted in rice, by the commission or its employees. The tax collector, upon receipt of the application and the payment of the fee which shall be computed by multiplying the total number of acres of land to be planted in rice by such applicant by the cost per acre set by the board of supervisors, shall issue the permit to the applicant. All moneys collected from the sale of such permits shall be placed in a special fund for the mosquito control district in the county depository.

HISTORY:
Codes, 1942, § 7106-09; Laws, 1954, ch. 288, § 9.

§ 41-27-119. Office facilities for commission; expenses; employees.

The board of supervisors shall furnish office facilities for the commission, and shall pay all expenses of the commission, including reimbursement for expenses per diem, and salaries of employees, out of the funds obtained from the sale of permits. The tax collector of any county in which a county mosquito control program is in effect, may employ such person or persons as are necessary to take such applications and issue such permits. The compensation of said employees shall be allowed by the board of supervisors and paid out of the funds obtained from the sale of permits.

HISTORY:
Codes, 1942, § 7106-10; Laws, 1954, ch. 288, § 10.

§ 41-27-121. Other powers of commission.

The county mosquito control commission shall have the right to employ such individuals as are necessary, and to purchase such equipment as shall be necessary, for the application of poison or other mosquito control material to the lands within the county to be planted in rice. The commission shall also have authority to contract with persons, firms or corporations, for the application of poison or other mosquito control material to the lands which will be planted in rice. The commission, its employees, or individuals contracted with for the purpose of applying such poison or other mosquito control material shall have the right to go upon the lands to be planted in rice within such district and apply such poison or other mosquito control material as may be needed to control and exterminate rice field mosquitoes.

HISTORY:
Codes, 1942, § 7106-12; Laws, 1954, ch. 288, § 12.

§ 41-27-123. Penalty for failure to comply with provisions of article.

Any person, firm, association or corporation, engaging in the planting or producing of rice, who fails to comply with the provisions of this article where a county mosquito control program is in effect, shall be penalized as follows:

(1) Five percent (5%) penalty, on total cost of permit, for applications filed after March 31st;

(2) Five percent (5%) penalty, for applications in which the total acreage stated is less than the actual total acreage planted, where such mistake is not willful, such assessment applying to the additional cost of such permit;

(3) Fifty percent (50%) penalty, for each acre where applicant willfully

states acreage lower than that planted, the penalty applying to the acreage planted in excess of that stated in the permit.

The above penalties are to be in addition to the cost of the permit as determined by the board of supervisors. Said penalties shall be assessed by the county mosquito control commission whenever a violation of this article is discovered. In the event a proper permit is not obtained, then the cost of said permit and the penalties herein provided for, shall be a lien against all rice grown or produced by the person or persons failing to comply with the provisions of this article.

HISTORY:
Codes, 1942, § 7106-13; Laws, 1954, ch. 288, § 13.

§ 41-27-125. Criminal penalty.

Anyone willfully refusing to comply with this article shall be guilty of a misdemeanor, and upon conviction thereof, be fined not less than One Hundred Dollars ($100.00), nor more than Five Hundred Dollars ($500.00), or be imprisoned in the county jail not less than fifteen (15) days, nor more than ninety (90) days, or be both so fined and imprisoned.

HISTORY:
Codes, 1942, § 7106-14; Laws, 1954, ch. 288, § 14.

Cross References —
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 41-27-127. Funds for carrying on program; tax on property.

If the cost of the mosquito control program for any year exceeds the estimated cost and if the program funds become exhausted, then the board of supervisors may transfer from the general county fund, sufficient money to complete the program for such year. Such board may borrow money for such purpose by issuance of its note, said note and interest thereon to be paid on or before April 15th of the following year, and such board may levy a tax on the taxable property in the county sufficient to produce funds to pay said note and interest thereon.

HISTORY:
Codes, 1942, § 7106-11; Laws, 1954, ch. 288, § 11.

Cross References —
Local ad valorem tax levies, generally, see §§ 27-39-301 et seq.

§ 41-27-129. Cooperating with state or federal agency.

The board of supervisors and the county mosquito control commission are hereby authorized and empowered to accept funds from any state or federal agency and to cooperate with any state or federal agency in carrying out the provisions of this article.

HISTORY:
Codes, 1942, § 7106-15; Laws, 1954, ch. 288, § 15.

§ 41-27-131. Funds shall be placed in special fund in county depository.

All funds used for a mosquito control program shall be placed in a special fund in the county depository and shall be paid out by the county auditor on order of the board of supervisors. The board of supervisors shall not order such funds paid except on orders signed by a majority of the members of the commission and supported by properly itemized invoices or accounts.

HISTORY:
Codes, 1942, § 7106-16; Laws, 1954, ch. 288, § 16.

§ 41-27-133. Commission may be abolished and program terminated.

At any time the board of supervisors, in its discretion, may decide that a county mosquito control program is not feasible or that the need therefor no longer exists, in such event, the board of supervisors by order spread upon its minutes may abolish the county mosquito control commission and terminate such mosquito control program. In the event any such commission is abolished, any funds on hand for the use of such program, shall be transferred to the general fund of the county.

HISTORY:
Codes, 1942, § 7106-17; Laws, 1954, ch. 288, § 17.

CHAPTER 28.

DIABETES

Sec.
41-28-1. Definitions.
41-28-3. Program of public education and awareness of symptoms and care and treatment of diabetes to be established.
41-28-5. General duties of state board of health.

§ 41-28-1. Definitions.

The words and terms as used in this chapter shall have the following meanings:

(a) "State health officer" shall mean the state health officer of the state board of health, or his designated representative.

(b) "Board" shall mean the state board of health.

HISTORY:
Laws, 1977, ch. 464, § 1, eff from and after passage (approved April 13, 1977).

§ 41-28-3. Program of public education and awareness of symptoms and care and treatment of diabetes to be established.

The State Board of Health is authorized to establish a program of public education and awareness of the symptoms and care and treatment of persons suffering from diabetes. The program shall be designed to disseminate information to the public, to the medical and paramedical communities, and others, relating to the symptoms, care and treatment of diabetes.

HISTORY:
Laws, 1977, ch. 464, § 2, eff from and after passage (approved April 13, 1977).

§ 41-28-5. General duties of state board of health.

The board is authorized to:

(a) Assist in the development and expansion of educational programs for persons suffering from diabetes, including self-administration, prevention and home care and other medical and dental procedures and techniques designed to provide maximum control over any episodes typical of this condition;

(b) Enter into agreements with nonprofit organizations for the dissemination of such public information, through all forms of news media, local chapters or organizations, and other persons qualified to perform such functions;

(c) Employ all necessary administrative personnel as may be provided in its budget to carry out the provisions of this chapter; and

(d) Promulgate all rules and regulations necessary to effectuate the purposes of this chapter.

HISTORY:

Laws, 1977, ch. 464, § 3, eff from and after passage (approved April 13, 1977).

CHAPTER 29.

POISONS, DRUGS AND OTHER CONTROLLED SUBSTANCES

Article 1.	Caustic Poisons.	41-29-1
Article 3.	Uniform Controlled Substances Law.	41-29-101
Article 5.	Other Narcotic Drug Regulations.	41-29-301
Article 7.	Interception of Wire or Oral Communications.	41-29-501
Article 9.	Pen Register.	41-29-701

ARTICLE 1.

CAUSTIC POISONS.

Sec.	
41-29-1.	Short title.
41-29-3.	Declaration of purpose.
41-29-5.	“Dangerous caustic or corrosive substance” defined.
41-29-7.	“Misbranded parcel, package, or container” defined.
41-29-9.	Prohibited acts; guaranty; exceptions.
41-29-11.	Penalties.
41-29-13.	Confiscation.
41-29-15.	Sheriff's duties.
41-29-17.	Duties of district attorney, county attorney and justice of the peace.

§ 41-29-1. Short title.

This article may be cited as the Mississippi Caustic Poison Law of 1930.

HISTORY:
Codes, 1930, § 4988; 1942, § 6830; Laws, 1930, ch. 26.

RESEARCH REFERENCES

Am. Jur.
25 Am. Jur. 2d, Drugs and Controlled Substances §§ 1 et seq.

CJS.
28 C.J.S., Drugs and Narcotics §§ 14-20, 188, 189, 196.

72 C.J.S., Poisons §§ 1 et seq.

§ 41-29-3. Declaration of purpose.

The distribution and/or sale of certain dangerous, caustic or corrosive acids, alkalis and other nonlabeled poisonous substances or articles in the State of Mississippi, shall be in keeping with the regulations mentioned and outlined in this article.

HISTORY:
Codes, 1930, § 4980; 1942, § 6822; Laws, 1930, ch. 26.

Cross References —
Regulation of economic poisons, see §§ 69-23-1 et seq.

Adulterated or misbranded drugs, see §§ 75-29-1 et seq.

Criminal offenses involving poisons, see §§ 97-27-21 et seq.

RESEARCH REFERENCES

Am. Jur.
28 Am. Jur. Trials 427, Household Caustics Injury Litigation.

CJS.
72 C.J.S., Poisons §§ 2-4.

§ 41-29-5. "Dangerous caustic or corrosive substance" defined.

The term "dangerous caustic or corrosive substance" means each and all of the acids, alkalis, and substances named below:

(a) Hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid (HCl) in a concentration of ten percent (10%) or more;

(b) Sulphuric acids and any preparation containing free or chemically unneutralized sulphuric acid (H_2SO_4) in a concentration of ten percent (10%) or more;

(c) Nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO_3) in a concentration of five percent (5%) or more;

(d) Carbolic acid (C_6H_5OH), otherwise known as phenol, and any preparation containing carbolic acid in a concentration of five percent (5%) or more;

(e) Oxalic acid and any preparation containing free or chemically unneutralized oxalic acid ($H_2C_2O_4$) in a concentration of ten percent (10%) or more;

(f) Any salt of oxalic acid, other than cerium oxalate, and any preparation containing any such salt in a concentration of ten percent (10%) or more;

(g) Acetic acid or any preparation containing free or chemically unneutralized acetic acid ($HC_2H_3O_2$) in a concentration of twenty percent (20%) or more;

(h) Hypochlorous acid, either free or combined, and any preparation containing the same in a concentration so as to yield ten percent (10%) or more by weight of available chlorine, excluding calx chlorinata, bleaching powder, and chloride of lime;

(i) Potassium hydroxide and any preparation containing free or chemically unneutralized potassium hydroxide (KOH), including caustic potash and Vienna paste, in a concentration of ten percent (10%) or more;

(j) Sodium hydroxide and any preparation containing free or chemically unneutralized sodium hydroxide ($NaOH$), including caustic soda and lye, in a concentration of ten percent (10%) or more;

(k) Silver nitrate, sometimes known as lunar caustic, and any preparation containing silver nitrate ($AgNO_3$) in a concentration of five percent (5%) or more, and

(*l*) Ammonia water and any preparation yielding free or chemically uncombined ammonia (NH_3), including ammonium hydroxide and "hartshorn" in a concentration of five percent (5%) or more.

However, the provisions of this article shall not apply to "white arsenic and sal soda."

HISTORY:
Codes, 1930, § 4981; 1942, § 6823; Laws, 1930, ch. 26.

RESEARCH REFERENCES

Am. Jur.
48 Am. Jur. Proof of Facts 2d 401, Beryllium Poisoning.
48 Am. Jur. Proof of Facts 2d 431, Arsenic Poisoning.
28 Am. Jur. Trials 427, Household Caustics Injury Litigation.

§ 41-29-7. "Misbranded parcel, package, or container" defined.

The term "misbranded parcel, package, or container" means a retail parcel, package, or container of any dangerous caustic or corrosive substance for household use, not bearing a conspicuous, easily legible label or sticker, containing:

(a) The name of the article;

(b) The name and place of business of the manufacturer, packer, seller, or distributor;

(c) The word "POISON," running parallel with the main body of reading matter on said label or sticker, on a clear, plain background of a distinctly contrasting color, in uncondensed gothic capital letters, the letters to be not less than 24 point size, unless there is on said label or sticker no other type so large, in which event the type shall be not smaller than the largest type on the label or sticker, and

(d) Directions for treatment in case of accidental personal injury by the dangerous caustic or corrosive substance. Such directions need not, however, appear on labels or stickers on parcels, packages, or containers at the time of shipment or of delivery for shipment by manufacturers or wholesalers for other than household use.

HISTORY:
Codes, 1930, § 4982; 1942, § 6824; Laws, 1930, ch. 26.

RESEARCH REFERENCES

Am. Jur.
25 Am. Jur. 2d, Drugs and Controlled Substances § 250.
47 Am. Jur. Proof of Facts 2d 227, Manufacturer's Failure to Warn Consumer of Allergenic Nature of Product.

§ 41-29-9. Prohibited acts; guaranty; exceptions.

No person shall sell, barter, or exchange, or receive, hold, pack, or display, or offer for sale, barter, or exchange, in the State of Mississippi, any dangerous caustic or corrosive substance, in a misbranded parcel, package, or container, said parcel, package, or container being designed for household use. However, household products for cleaning and washing purposes, subject to this article, and labeled in accordance therewith, may be sold, offered for sale, held for sale and distributed in this state by any dealer, wholesale or retail.

No person shall be liable to prosecution and conviction under this article when he establishes a guaranty bearing the signature and address of a vendor residing in the United States from whom he purchased the dangerous caustic or corrosive substance, to the effect that such substance is not misbranded within the meaning of this article. No person in this state shall give any such guaranty when such dangerous caustic or corrosive substance is in fact misbranded within the meaning of this article.

This article is not to be construed as applying to any substance, subject to this article, sold at wholesale or retail for use by a retail druggist in filling, or in dispensing in pursuance of a prescription by a physician, dentist or veterinarian, or for use by or under the direction of a physician, dentist or veterinarian, or for use by a chemist in the practice or teaching of his profession, or for any industrial or professional use or for use in any of the arts and sciences.

HISTORY:

Codes, 1930, § 4983; 1942, § 6825; Laws, 1930, ch. 26.

RESEARCH REFERENCES

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 250, 261.

3 Am. Jur. Proof of Facts 3d 225, Products Liability – Formaldehyde Fumes Emitted by Building Materials.

CJS.

72 C.J.S., Poisons §§ 2-4, 8.

§ 41-29-11. Penalties.

Any person violating the provisions of Section 41-29-9 shall, upon conviction thereof, be punished by a fine of not less than Twenty-five Dollars ($25.00), or more than Two Hundred Dollars ($200.00), or by imprisonment of not more than ninety (90) days, or by both such fine and imprisonment, in the discretion of the court.

HISTORY:

Codes, 1930, § 4985; 1942, § 6827; Laws, 1930, ch. 26.

§ 41-29-13. Confiscation.

Any dangerous caustic or corrosive substance in a misbranded parcel, package, or container suitable for household use, that is being sold, bartered, or exchanged, or held, displayed, or offered for sale, barter, or exchange, shall be liable to be proceeded against in any court within the jurisdiction of which the same is found, and seized for confiscation by a process of libel. If such substance is condemned as misbranded, by said court, it shall be disposed of by destruction or sale, as the court may direct. If sold, the proceeds, less the actual costs and charges, shall be paid over to the state treasurer, but such substance shall not be sold contrary to the laws of the state. However, upon the payment of the costs of such proceedings and the execution and delivery of a good and sufficient bond to the effect that such substance will not be unlawfully sold or otherwise disposed of, the court may by order direct that such substance be delivered to the owner thereof. Such condemnation proceeding shall conform as near as may be to proceedings in the condemnation of any article held contrary to the laws of this state.

HISTORY:
Codes, 1930, § 4984; 1942, § 6826; Laws, 1930, ch. 26.

Cross References —
Regulation of livestock brands by acid or chemicals, see §§ 69-29-101 et seq.

§ 41-29-15. Sheriff's duties.

The sheriff's office in each county in the state shall enforce the provisions of this article, and the sheriff is authorized and empowered to approve and register such brands and labels intended for use under the provisions of this article as may be submitted to him for that purpose and as may in his judgment conform to the requirements of this article. However, in any prosecution under this article, the fact that any brand or label involved in said prosecution has not been submitted to said sheriff's office for approval, or if submitted, has not been approved by him, shall be immaterial.

HISTORY:
Codes, 1930, § 4986; 1942, § 6828; Laws, 1930, ch. 26.

Cross References —
Sheriff's duties, generally, see § 19-25-67.

§ 41-29-17. Duties of district attorney, county attorney and justice of the peace.

Every district attorney, county attorney or justice of the peace, to whom there is presented, or who in any way procures, satisfactory evidence of any violation of the provisions of this article, shall cause appropriate proceedings to be commenced and prosecuted in the proper courts, without delay, for the enforcement of the penalties provided in this article.

HISTORY:
Codes, 1930, § 4987; 1942, § 6829; Laws, 1930, ch. 26.

Editor's Notes —
Pursuant to Miss. Const. Art. 6, § 171, all references in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References —
Prosecutions by county attorneys, generally, see § 19-23-11.
Prosecutions by district attorneys, generally, see § 25-31-11.
Criminal jurisdiction of justice court judges, see § 99-33-1.

ARTICLE 3.

UNIFORM CONTROLLED SUBSTANCES LAW.

Sec.
41-29-101. Title of article.
41-29-103. Purpose.
41-29-105. Definitions.
41-29-107. Bureau of narcotics; composition; qualifications; dismissal.
41-29-107.1. Bureau of narcotics public website; requisite information to be maintained on website.
41-29-108. Vehicles for use of bureau; liability insurance.
41-29-109. Cooperation with bureau of narcotics.
41-29-110. Bureau of narcotics work program.
41-29-111. Powers and duties of bureau; regulation of substances.
41-29-112. Special contract agents or investigators.
41-29-113. Schedule I of controlled substances.
41-29-115. Schedule II of controlled substances.
41-29-117. Schedule III of controlled substances.
41-29-119. Schedule IV of controlled substances.
41-29-121. Schedule V of controlled substances.
41-29-122. Exempt chemical preparations and mixtures.
41-29-123. Revision and republication of schedules.
41-29-125. Rules and regulations relative to registration and control of manufacture, distribution and dispensing of controlled substances; delivery of Schedule II controlled substance by mail or other shipment to be made only to persons eighteen or older.
41-29-127. Registration; factors considered.
41-29-129. Revocation and suspension of registration.
41-29-131. Denial, suspension, revocation, or refusal to renew license; proceedings.
41-29-133. Records and inventories.
41-29-135. Order forms.
41-29-136. Harper Grace's Law; legal possession, use, research, cultivation, processing, dispensing, prescribing or administration of cannabidiol; restrictions [Repealed effective July 1, 2021].
41-29-137. Prescriptions.
41-29-138. Applicability of avoirdupois system of weights.
41-29-139. Prohibited acts; penalties.
41-29-140. Fines and penalties; violation of Section 41-29-139.
41-29-141. Prohibited acts B; penalties.
41-29-142. Enhanced penalties for sale, etc. of controlled substances in, on or within specified distances of schools, churches and certain other buildings.
41-29-143. Prohibited acts C; penalties.
41-29-144. Acquiring or obtaining possession of controlled substance, legend drug or prescription by misrepresentation, fraud and the like; penalty.
41-29-145. Distribution to persons under age twenty-one.
41-29-146. False representation of prescription or legend drug; penalty.
41-29-147. Second and subsequent offenses.
41-29-148. Burden of proof of exemptions and exceptions; presumption as to holding of registration or order form.
41-29-149. Suspended sentences; eligibility for parole; resentencing.
41-29-149.1. Mississippi Medical Emergency Good Samaritan Act.
41-29-150. Participation in drug rehabilitation programs; probation; expunction of record upon application to court.
41-29-151. Penalties to be additional; barring of prosecutions.
41-29-152. Enhancement of penalty for violations of Uniform Controlled Substances Law while in possession of firearm; "firearm" defined.
41-29-153. Forfeitures.
41-29-154. Disposition of seized controlled substances and paraphernalia.
41-29-155. Injunctions.

Sec.
41-29-157. Administrative inspection warrants and search warrants.
41-29-159. Powers of enforcement personnel; duty of certain individuals to notify Bureau of Narcotics of death caused by drug overdose.
41-29-160. Payments to informers; disposition of moneys expended for purchase of controlled substances.
41-29-161. Bonds of bureau officers and employees.
41-29-163. Judicial review of final determinations, findings and conclusions.
41-29-165. Judicial review of convictions and orders.
41-29-167. Cooperative arrangements.
41-29-168. Required reports.
41-29-169. Drug abuse education programs.
41-29-171. Research programs on misuse and abuse of controlled substances.
41-29-173. Effect of Uniform Controlled Substances Law on pending proceedings.
41-29-175. Continuation of regulations.
41-29-176. Repealed.
41-29-176.1. Prosecution of cases involving seized property.
41-29-177. Procedure for disposition of seized property; petition of forfeiture; inquiry into ownership; failure to discover owner.
41-29-179. Procedure for disposition of seized property; answer; hearing; burden of proving property subject to forfeiture; disposition after court's finding; summary forfeiture of controlled substances, raw material and paraphernalia.
41-29-181. Procedure for disposition of seized property; order directing disposition by bureau of narcotics.
41-29-183. Procedure for disposition of seized property; exclusiveness of remedy.
41-29-185. Disposition of forfeited property transferred pursuant to federal property sharing provisions.
41-29-187. Production of business records and documents; investigations of felony violations; copy costs; return of documents; liability for compliance; sealed applications; offense for disclosures; penalties.
41-29-189. Drug Evidence Disposition Fund created; purpose; sources of funds.
41-29-191. Collection of unused prescription pills and drugs brought to drug task force main office from residential sources.

§ 41-29-101. Title of article.

This article is to be known as the Uniform Controlled Substances Law.

HISTORY:

Codes, 1942, § 6831-51; Laws, 1971, ch. 521, § 1, eff from and after passage (approved April 16, 1971).

Cross References —

Drug Courts, see §§ 9-23-1 et seq.

Jurisdiction of state grand jury over cases involving Uniform Controlled Substances Law, see § 13-7-7.

Other narcotic drug regulations, see §§ 41-29-301 et seq.

Commitment of alcoholics and drug addicts for treatment, see §§ 41-31-1 et seq.

Issuance of licenses to carry concealed pistols or revolvers to persons found guilty of violations of this article, see § 45-9-101.

Drug participation program, see §§ 47-5-501 et seq.

Authority of commissioner of public safety to suspend license of operator without preliminary hearing for violation of Uniform Controlled Substances Law, see § 63-1-53.

Comparable Laws from other States —

Alabama Code, §§ 20-2-1 et seq.

Arkansas Code Annotated, §§ 5-64-101 through 5-64-508.

Georgia Code Annotated, §§ 16-13-20 through 16-13-56.

Louisiana Revised Statutes Annotated, §§ 40:961 through 40:995.

North Carolina General Statutes, §§ 90-86 et seq.

Tennessee Code Annotated, §§ 53-11-301 through 53-11-452.

Texas Health and Safety Code, §§ 481.001 et seq.

Virginia Code Annotated, §§ 54.1-3400 et seq.

Federal Aspects—

Federal Controlled Substances Act, see 21 USCS §§ 801 et seq.

JUDICIAL DECISIONS

1. Counsel.

Driver did not receive ineffective assistance of counsel because the forfeiture in rem of his property constituted a civil proceeding, and the right to effective assistance of counsel failed to apply in civil proceedings; the driver faced no pending criminal charges in the proceedings. Bobo v. State ex rel. Pelahatchie Police Dep't (In re $137,325.00 in U.S. Currency), 204 So. 3d 317, 2016 Miss. App. LEXIS 746 (Miss. Ct. App. 2016).

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Am. Jur.

Jurisdictions adopting Uniform Controlled Substances Law, see Am. Jur. 2d Desk Book, Item No. 124.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 21- 26, 141 et seq., 197 et seq.

CJS.

28 C.J.S., Drugs and Narcotics §§ 210 et seq., 263 et seq.

72 C.J.S., Poisons §§ 2-4.

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Payne, An introduction to civil forfeiture in Mississippi: An effective law enforcement tool or cash register justice? 59 Miss. L. J. 453, Fall 1989.

Practice References.

Defense of Narcotics Cases (Matthew Bender).

Smith, Prosecution and Defense of Forfeiture Cases (Matthew Bender).

§ 41-29-103. Purpose.

The purpose of this article is to make, wherever possible, the law of Mississippi uniform with that of states having the same or similar laws.

HISTORY:

Codes, 1942, § 6831-52; Laws, 1971, ch. 521, § 2, eff from and after passage (approved April 16, 1971).

§ 41-29-105. Definitions.

The following words and phrases, as used in this article, shall have the following meanings, unless the context otherwise requires:

(a) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

(1) A practitioner (or, in his presence, by his authorized agent); or

(2) The patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. Such word does not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman. This definition shall not be applied to the term "agent" when such term clearly designates a member or officer of the Bureau of Narcotics or other law enforcement organization.

(c) "Board" means the Mississippi State Board of Medical Licensure.

(d) "Bureau" means the Mississippi Bureau of Narcotics. However, where the title "Bureau of Drug Enforcement" occurs, that term shall also refer to the Mississippi Bureau of Narcotics.

(e) "Commissioner" means the Commissioner of the Department of Public Safety.

(f) "Controlled substance" means a drug, substance or immediate precursor in Schedules I through V of Sections 41-29-113 through 41-29-121.

(g) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

(h) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(i) "Director" means the Director of the Bureau of Narcotics.

(j) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

(k) "Dispenser" means a practitioner who dispenses.

(*l*) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(m) "Distributor" means a person who distributes.

(n) "Drug" means (1) a substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (2) a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (3) a substance (other than food) intended to affect the structure or any function of the body of man or animals; and (4) a substance intended for use as a component of any article specified in this paragraph. Such word does not include devices or their components, parts, or accessories.

(o) "Hashish" means the resin extracted from any part of the plants of the genus Cannabis and all species thereof or any preparation, mixture or derivative made from or with that resin.

(p) "Immediate precursor" means a substance which the board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(q) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term "manufacture" does not include the preparation, compounding, packaging or labeling of a controlled substance in conformity with applicable state and local law:

(1) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(2) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale.

(r) "Marihuana" means all parts of the plant of the genus Cannabis and all species thereof, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds, excluding hashish.

(s) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative or preparation of opium or opiate;

(2) Any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1), but not including the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw; and

(4) Cocaine, coca leaves and any salt, compound, derivative or preparation of cocaine, coca leaves, and any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(t) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under Section 41-29-111, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). Such word does include its racemic and levorotatory forms.

(u) "Opium poppy" means the plant of the species Papaver somniferum L., except its seeds.

(v) "Paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of the Uniform Controlled Substances Law. It includes, but is not limited to:

(i) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(ii) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

(iii) Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance;

(iv) Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(v) Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances;

(vi) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use or designed for use in cutting controlled substances;

(vii) Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marihuana;

(viii) Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances;

(ix) Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances;

(x) Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances;

(xi) Hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances into the human body;

(xii) Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marihuana, cocaine, hashish or hashish oil into the human body, such as:

1. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;
2. Water pipes;
3. Carburetion tubes and devices;
4. Smoking and carburetion masks;
5. Roach clips, meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;
6. Miniature cocaine spoons and cocaine vials;
7. Chamber pipes;

8. Carburetor pipes;
9. Electric pipes;
10. Air-driven pipes;
11. Chillums;
12. Bongs; and
13. Ice pipes or chillers.

In determining whether an object is paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(i) Statements by an owner or by anyone in control of the object concerning its use;

(ii) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;

(iii) The proximity of the object, in time and space, to a direct violation of the Uniform Controlled Substances Law;

(iv) The proximity of the object to controlled substances;

(v) The existence of any residue of controlled substances on the object;

(vi) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of the Uniform Controlled Substances Law; the innocence of an owner, or of anyone in control of the object, as to a direct violation of the Uniform Controlled Substances Law shall not prevent a finding that the object is intended for use, or designed for use as paraphernalia;

(vii) Instructions, oral or written, provided with the object concerning its use;

(viii) Descriptive materials accompanying the object which explain or depict its use;

(ix) National and local advertising concerning its use;

(x) The manner in which the object is displayed for sale;

(xi) Whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(xii) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;

(xiii) The existence and scope of legitimate uses for the object in the community;

(xiv) Expert testimony concerning its use.

(w) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(x) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(y) "Practitioner" means:

(1) A physician, dentist, veterinarian, scientific investigator, optometrist certified to prescribe and use therapeutic pharmaceutical agents under Sections 73-19-153 through 73-19-165, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state; and

(2) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(z) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(aa) "Sale," "sell" or "selling" means the actual, constructive or attempted transfer or delivery of a controlled substance for remuneration, whether in money or other consideration.

(bb) "State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(cc) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

HISTORY:

Codes, 1942, § 6831-56; Laws, 1971, ch. 521, § 6; Laws, 1972, ch. 520, § 5; Laws, 1974, ch. 415, § 1; Laws, 1981, ch. 502, § 1; Laws, 1982, ch. 323, § 1; Laws, 2005, ch. 404, § 4, eff from and after July 1, 2005.

Cross References —

Definition of "valid prescription," as it pertains to prescriptions for controlled substances, for the purposes of this article , see § 41-29-137.

Penalty of life imprisonment without parole for sale of specified quantities of certain drugs, see § 41-29-139.

False representation of counterfeit substance, see § 41-29-146.

Paraphernalia as defined in this section being subject to forfeiture, see § 41-29-153.

Summary forfeiture of paraphernalia, as defined in this section, see § 41-29-179.

Prohibition and punishing for furnishing controlled substances or narcotic drugs to offenders, or taking such items on property occupied by them, see §§ 47-5-191 to 47-5-195.

Dentists, generally, see §§ 73-9-1 et seq.

Physicians, generally, see §§ 73-25-1 et seq.

State board of medical licensure, generally, see §§ 73-43-1 et seq.

JUDICIAL DECISIONS

1. In general.

State presented sufficient evidence to find beyond a reasonable doubt that defendant was guilty of each element of the crime of manufacturing marijuana; defendant admitted that the marijuana plants found in the woods were his and the forensic analysis report confirmed that the plants and substances recovered from the woods and defendant's residence were indeed marijuana. Williams v. State, 971 So. 2d 581, 2007 Miss. LEXIS 571 (Miss. 2007).

Under the statute, distribute and deliver effectively meant the same thing as distribute meant to deliver other than by administering or dispensing a controlled substance. Hurlburt v. State, 803 So. 2d 1277, 2002 Miss. App. LEXIS 1 (Miss. Ct. App. 2002).

Distributing a controlled substance included transactions that were sales as well as transactions that may not be considered sales; intent of the statute was to thwart the exchange or transfer of the substance whether accompanied by consideration or not. Meek v. State, 806 So. 2d 236, 2001 Miss. LEXIS 266 (Miss. 2001), cert. denied, 537 U.S. 826, 123 S. Ct. 115, 154 L. Ed. 2d 37, 2002 U.S. LEXIS 6064 (U.S. 2002).

Person who is personally present at drug transaction and who aids and abets sale may be convicted for sale notwithstanding that person never has control of drug and receives no remuneration or consideration. Minor v. State, 482 So. 2d 1107, 1986 Miss. LEXIS 2352 (Miss. 1986).

Section 41-29-105, which prohibits possession of all species of cannabis plants, is neither vague nor overbroad. Ervin v. State, 431 So. 2d 130, 1983 Miss. LEXIS 2576 (Miss. 1983).

Construing together the two subsections of this statute defining the terms "manufacture" and "production," it is apparent that the legislature prohibited the simple growing of marijuana; thus, in a prosecution for the manufacture of marijuana, the state is not required to show that the manufacture was by extraction, chemical synthesis or a combination thereof. Boring v. State, 365 So. 2d 960, 1978 Miss. LEXIS 2433 (Miss. 1978), cert. denied, 442 U.S. 916, 99 S. Ct. 2835, 61 L. Ed. 2d 283, 1979 U.S. LEXIS 2332 (U.S. 1979).

Proof of the offense of "sale" of a controlled substance under the definition contained in Code 1972 § 41-29-105 (aa) requires a showing that a transfer or delivery for remuneration occurred, but does not require that there be a transfer from one person to another; the identity of a person to whom contraband is delivered is not essential to an indictment for a "sale." Jenkins v. State, 308 So. 2d 95, 1975 Miss. LEXIS 1845 (Miss. 1975).

Indictment charging that defendant "did deliver a controlled substance, to wit: Amphetamine" did not state an essential to the crime of delivery of a controlled substance in that it failed to identify the person to whom the contraband was delivered. Taylor v. State, 295 So. 2d 735, 1974 Miss. LEXIS 1503 (Miss. 1974).

RESEARCH REFERENCES

ALR.

Marijuana, psilocybin, peyote or similar drugs of vegetable origin as narcotics for purposes of drug prosecution. 50 A.L.R.3d 1164.

Right of indigent defendant in state criminal case to assistance of chemist, toxicologist, technician, narcotics expert, or similar nonmedical specialist in substance analysis. 74 A.L.R.4th 388.

Liability for discharge of at-will employee for refusal to submit to drug testing. 79 A.L.R.4th 105.

Admissibility, in criminal prosecution, of expert opinion allegedly stating whether drugs were possessed with intent to distribute – state cases. 83 A.L.R.4th 629.

Validity, construction, and effect of state statute regulating sale of counterfeit or imitation controlled substances. 84 A.L.R.4th 936.

Construction and Application of State Drug Paraphernalia Acts. 23 A.L.R. 6th 307.

Validity, under Federal Constitution, of so-called "head shop" ordinances or statutes, prohibiting manufacture and sale of drug use related paraphernalia. 69 A.L.R. Fed. 15.

Am. Jur.

38 Am. Jur. Proof of Facts 2d 589, Physician's Liability for Causing Patient's Drug Addiction.

§ 41-29-107. Bureau of narcotics; composition; qualifications; dismissal.

(1) There is created within the Mississippi Department of Public Safety an office to be known as the Mississippi Bureau of Narcotics. The office shall have a director who shall be appointed by the Commissioner of Public Safety. The commissioner may assign to the appropriate offices of the department such powers and duties deemed appropriate to carry out the lawful functions of the Mississippi Bureau of Narcotics.

(2) The Commissioner of Public Safety is empowered to employ or appoint necessary agents. The commissioner may also employ such secretarial, clerical and administrative personnel, including a duly licensed attorney, as necessary for the operation of the bureau, and shall have such quarters, equipment and facilities as needed. The salary and qualifications of the attorney authorized by this section shall be fixed by the director, but the salary shall not exceed the salary authorized for an assistant attorney general who performs similar duties.

(3) The director and agents so appointed shall be citizens of the United States and of the State of Mississippi, and of good moral character. The agents shall be not less than twenty-one (21) years of age at the time of such appointment. In addition thereto, those appointed shall have satisfactorily completed at least two (2) years of college studies. However, two (2) years of satisfactory service as a law enforcement officer and the completion of the prescribed course of study at a school operated by the Bureau of Narcotics and Dangerous Drugs, United States Justice Department, shall satisfy one (1) year of such college studies, and four (4) years of satisfactory service as a law enforcement officer and the completion of the prescribed course of study at such federal bureau school as stated heretofore shall fully satisfy the two (2) years of college requirement.

During the period of the first twelve (12) months after appointment, any employee of the bureau shall be subject to dismissal at the will of the director. After twelve (12) months' service, no employee of the bureau shall be subject to dismissal unless charges have been filed with the director, showing cause for dismissal of the employee of the bureau. A date shall be set for hearing before the director and the employee notified in writing of the date of such hearing and of the charges filed. The hearing shall be held not less than ten (10) days after notification to the employee. After the hearing, at which the employee shall be entitled to legal counsel, a written order of the director shall be necessary for dismissal and the decision shall be final. Any such order of the director shall be a public record and subject to inspection as such.

(4) The Commissioner of Public Safety may assign members of the Mississippi Highway Safety Patrol, regardless of age, to the bureau; however, when any highway patrolman or other employee, agent or official of the Mississippi Department of Public Safety is assigned to duty with, or is employed by, the bureau, he shall not be subject to assignment or transfer to any other office or department within the Mississippi Department of Public Safety except by the commissioner. Any highway patrolman assigned to duty with the bureau shall retain his status as a highway patrolman, but shall be under the supervision of the director. For purposes of seniority within the Highway Safety Patrol and for purposes of retirement under the Mississippi Highway Safety Patrol Retirement System, highway patrolmen assigned to the bureau will be credited as if performing duty with the Highway Safety Patrol. The commissioner may assign employees of the Highway Safety Patrol to the Mississippi Bureau of Narcotics and may assign agents of the bureau to the Highway Safety Patrol; however, any employees so assigned must meet all established requirements for the duties to which they are assigned.

(5) The Commissioner of Public Safety may enter into agreements with bureaus or departments of other states or of the United States for the exchange or temporary assignment of agents for special undercover assignments and for performance of specific duties.

(6) The Commissioner of Public Safety may assign agents of the bureau to such duty and to request and accept agents from such other bureaus or departments for such duty.

(7)(a) All funds, property and/or PINs belonging to the Mississippi Bureau of Narcotics are transferred to the Department of Public Safety on July 1, 2004. Any funds, property or PINs that are appropriated to or otherwise received by the bureau, or appropriated to, transferred to or otherwise received by the Department of Public Safety for the use of the bureau, shall be budgeted and maintained by the department as funds of the department. Personnel occupying PINs transferred from the bureau to the department shall serve on a probationary basis during the twelve (12) months after July 1, 2004.

(b) In transferring the responsibilities of the Mississippi Bureau of Narcotics to the Department of Public Safety, the commissioner and the director of the bureau shall develop and implement written security precautions that shall be observed by all affected employees. The commissioner and the director shall review, modify and approve the plan before the effective date of the merger of responsibilities of the bureau and the department.

HISTORY:

Codes, 1942, § 6831-53; Laws, 1971, ch. 521, § 3; Laws, 1972, ch. 520, § 2; Laws, 1983, ch. 490; Laws, 1984, ch. 518, § 2; Laws, 2004, ch. 595, § 17; Laws, 2005, ch. 333, § 1, eff from and after July 1, 2005.

Editor's Notes —

Laws of 1972, ch. 520, § 1, provides as follows:

"SECTION 1. (a) The Mississippi Bureau of Drug Enforcement shall henceforth be designated as the Mississippi Bureau of Narcotics.

(b) The Mississippi Bureau of Drug Enforcement as created by Chapter 521, Section 3, Laws of 1971, being Section 6831-53, Mississippi Code of 1942, is hereby transferred from the state board of health to the Mississippi Department of Public Safety; all personnel, records, property, equipment and all funds allocated the bureau of drug enforcement are hereby transferred to and placed under the supervision of the bureau of narcotics of the department of public safety. Any funds transferred by this section and any funds appropriated to the bureau of narcotics shall be maintained in an account separate from any funds of the department of public safety or of funds to be appropriated for said department or any division or bureau of said department and shall never be commingled with any funds of said department."

Laws of 1993, ch. 338, §§ 1, 2, effective July 1, 1993, provide as follows:

"SECTION 1. The Department of Finance and Administration is hereby authorized to transfer to the Bureau of Narcotics, Department of Public Safety, the land and building located in the Greater Jackson Industrial Park at 6090 I-55 South Frontage Road, Jackson, Mississippi, described more particularly as:

PARCEL 1.

Commence at the Southeast corner of the Northeast quarter of the Southeast quarter of Section 23, Township 4 North, Range 1 West, Hinds County, Mississippi, and from this point run thence South 85 degrees 51 minutes West for a distance of 256.3 feet to the point of beginning of the property herein described. Run thence North 60 degrees 51 minutes West for a distance of 580.0 feet to a point on the East right-of-way line of Interstate Highway 55, as said right-of-way line exists this date; run thence North 29 degrees 07 minutes East along the said East right-of-way line for a distance of 64.8 feet to a point; run thence North 29 degrees 08 minutes 30 seconds East and parallel to said East right-of-way line for a distance of 435.2 feet to a point; run thence South 60 degrees 51 minutes East for a distance of 580.0 feet to a point; run thence South 29 degrees 08 minutes 30 seconds West for a distance of 500.0 feet to a point of beginning. The herein described property lying and being situated in the Northeast Quarter of the Southeast Quarter and the Southeast Quarter of the Southeast Quarter of the Section 23, Township 4 North, Range 1 West, Hinds County, Mississippi, and containing 6.658 acres, more or less.

PARCEL 2.

Commence at the Southeast corner of the Northeast quarter of the Southeast quarter of Section 23, Township 4 North, Range 1 West, Hinds County, Mississippi, and from this point run thence South 85 degrees 51 minutes West for a distance of 256.30 feet to the Southeast corner of that certain parcel of land conveyed to Hawera Tool Manufacturing Company by a deed recorded in Deed Book 2554 at page 722 thereof in the office of the Chancery Clerk of Hinds County at Jackson, Mississippi; run thence North 60 degrees 51 minutes West along the South line of the said Hawera Tool Manufacturing Company property for a distance of 580.0 feet to the Southwest corner of said property, said point being located on the East right-of-way line of Interstate Highway 55, as said highway exists this date; run thence North 29 degrees 07 minutes East along the said East right-of-way line for a distance of 64.80 feet to the point of beginning of the herein described property. Run thence North 60 degrees 51 minutes 30 seconds West along the said East right-of-way line for a distance of 20.0 feet to a point; run thence North 29 degrees 08 minutes 30 seconds East along the said East right-of-way line for a distance of 435.2 feet to a point; thus leaving the said East right-of-way line, run thence South 60 degrees 51 minutes East for a distance of 20.0 feet to the Northwest corner of the aforesaid Hawera Tool Manufacturing Company property; run thence South 29 degrees 08 minutes 30 seconds West along the West line of the said Hawera Tool Manufacturing Company property for a distance of 435.2 feet to the point of beginning. The herein described property lying and being situated in the Northeast Quarter of the Southeast Quarter of Section 23, Township 4 North, Range 1 West, Hinds County, Mississippi, and containing 0.20 acres, more or less.

PARCEL 3.

Begin at the Southeast corner of the Northeast One-Quarter of the Southeast One-Quarter of Section 23, Township 4 North, Range 1 West, Hinds County, Mississippi, and from this point run thence North 00 degrees 08 minutes 54 seconds East along the East line of the said Northeast One-Quarter of the Southeast One-Quarter for a distance of 420.08 feet to a point; run thence North 89 degrees 51 minutes 06 seconds West for a distance of 9.20 feet to the Northeast corner of that parcel of property conveyed to Hawera Tool Manufacturing Company by a deed recorded in Deed Book 2554 at Page 722 thereof in the office of the Chancery Clerk of Hinds County at Jackson, Mississippi; run thence South 29 degrees 46 minutes 40 seconds West along the East line of the said Hawera Tool Manufacturing Company property for a distance of 500.00 feet to the Southeast corner thereof; run thence North 86 degrees 54 minutes 10 seconds East for a distance of 256.81 feet to the point of beginning. The herein described property lying and being situated in the East One-Half of the Southeast One-Quarter of Section 23, Township 4 North, Range 1 West, Hinds County, Mississippi, and containing 1.282 acres, more or less."

"SECTION 2. The Bureau of Narcotics shall assume all supervision, management, maintenance and control of the property described in Section 1."

Laws of 2004, ch. 595, § 21 provides:

"Section 1, Chapter 520, Laws of 1972, which provides that funds appropriated to the Bureau of Narcotics shall be kept separate from the funds of the Department of Public Safety, is repealed."

Laws of 2015, ch. 355, § 1, provides:

"SECTION 1. The Department of Finance and Administration, acting on behalf of the Mississippi Bureau of Narcotics, is authorized to transfer the real property described below and located in Newton County, Mississippi, to the Mayor and Board of Aldermen of the City of Newton. The following description is based on the Mississippi State Plane Coordinate System, East Zone, NAD 83 (2011), Grid Values, (U.S. Survey Feet), using a combined factor of 0.999946278 and a convergence angle of minus (-) 00 degrees 09 minutes 39.12 seconds calculated at the commencing point of the following description:

"Commencing at a reset cotton picker spindle, countersunk 4" below the surface of the asphalt runway on the J.H. Easom Field, marking the southeast corner of Section 35, Township 6 North, Range 11 East, being defined as N: 1022503.23 feet, E: 891269.72 feet on the above referenced coordinate system; thence North 44 degrees 36 minutes 23 seconds East a distance of 698.44 feet to a found ½" rebar being further defined as N: 1023000.49 feet, E: 891760.19 feet on the above referenced coordinate system and the POINT OF BEGINNING of the herein described parcel of land; thence North 45 degrees 08 minutes 02 seconds West a distance of 792.07 feet to a point being a set ½" rebar; thence South 89 degrees 00 minutes 04 seconds East a distance of 163.85 feet to a point being a set ½" rebar; thence South 00 degrees 53 minutes 56 seconds West a distance of 75.00 feet to a point being a set ½" rebar; thence South 89 degrees 00 minutes 21 seconds East a distance of 556.86 feet to a point being a set ½" rebar in an existing fence line; thence along said fence line run South 00 degrees 31 minutes 35 seconds West a distance of 473.90 feet to a point being a set ½" rebar; thence leaving said fence line run North 89 degrees 01 minutes 12 seconds West a distance of 153.71 feet back to the point of beginning. The herein described parcel of land contains 4.55 acres more or less, being situated in and a part of the SE ¼ of the SE ¼ of said Section 35 and a part of the SW ¼ of the SW ¼ of Section 36, all in said Township

6 North, Range 11 East, Newton County, Mississippi."

JUDICIAL DECISIONS

1. In general.

There was no showing of a pattern of unconstitutionally discriminatory hiring practices by the Bureau of Narcotics where, though a relatively small percentage of employees were minorities, the bureau had engaged in extensive minority recruitment, and where, though there was a relatively high education requirement of two years of college or the equivalent, such requirement was justified by the highly specialized nature of the work. Morrow v. Dillard, 412 F. Supp. 494, 1976 U.S. Dist. LEXIS 15797 (S.D. Miss. 1976), aff'd in part and rev'd in part, 580 F.2d 1284, 1978 U.S. App. LEXIS 8724 (5th Cir. Miss. 1978).

OPINIONS OF THE ATTORNEY GENERAL

Mississippi Highway Safety Patrol officers assigned to duty with the Bureau of Narcotics retain their status as Safety Patrol employees. 1998 Miss. Op. Att'y Gen. 111.

The salary of the director of the Bureau of Narcotics may not be waived; however, the director may donate the salary back to the agency subject to mandatory deductions. 2003 Miss. Op. Att'y Gen. 751.

RESEARCH REFERENCES

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 197 et seq.

CJS.

72 C.J.S., Poisons §§ 8, 9.

§ 41-29-107.1. Bureau of narcotics public website; requisite information to be maintained on website.

(1) The Mississippi Bureau of Narcotics shall establish and maintain a public website that is searchable by case numbers created by the bureau which tracks seized property from the time of seizure to final disposition of the property. The website shall be designed in a manner that allows the information required by this section to be uploaded to the website. The website shall include the following information regarding property that is seized by a law enforcement agency pursuant to Section 41-29-153:

(a) The name of the law enforcement agency that seized the property;

(b) A description of each item seized, including the approximate value of the property;

(c) A copy of the notice of intent to forfeit as described in Section 41-29-176 or the petition for forfeiture as described in Section 41-29-177, whichever is applicable;

(d) A copy of any petition to contest forfeiture filed as described in Section 41-29-176;

(e) If a forfeiture was obtained because no petition to contest forfeiture was timely filed as provided in Section 41-29-176, a copy of the written declaration of forfeiture as required by Section 41-29-176;

(f) If a forfeiture is obtained under Section 41-29-177, a copy of any final judgment or dispositive order regarding the merits of the petition for forfeiture; and

(g) If the forfeiture was initiated under Section 41-29-176 and a petition to contest is filed, a copy of any final order or other dispositive order regarding the forfeiture.

(2)(a) Except as otherwise provided in this section for the bureau, upon seizure of any property by a law enforcement agency pursuant to Section 41-29-153, the seizing law enforcement agency shall provide the applicable information required by subsection (1) of this section to the district attorney of the county in which the property was seized within thirty (30) days of such seizure. However, if the bureau is conducting the seizure of property on behalf of a law enforcement agency, the provisions of paragraph (b) of this subsection shall apply. Within thirty (30) days of receipt of notice of intent to forfeit as described in Section 41-29-176 or the filing of a petition for forfeiture as described in Section 41-29-177 in a court of competent jurisdiction, the district attorney shall upload the information required by this section to the bureau's website. Within thirty (30) days of service of a petition to contest forfeiture as described by Section 41-29-176, the district attorney shall upload the information required by the section to the bureau's website. Within thirty (30) days of dispositive actions regarding any seized property, the district attorney shall upload the applicable information required by subsection (1) of this section to the bureau's website. The commander of a multijurisdictional taskforce may appoint one (1) agency to report its seizures to the district attorney of the county in which the property was seized. Any law enforcement agency that fails to provide the information required by this section shall be disqualified from applying for or receiving state grants.

(b) Upon seizure of any property by the bureau pursuant to Section 41-29-153 or pursuant to a request by a law enforcement agency for the bureau to seize property on behalf of the law enforcement agency, the bureau shall upload the information required by this subsection on its website within thirty (30) days of the seizure, or from the time of the receipt of the request from the law enforcement agency.

(3) Failure to upload the information required by this section shall not invalidate the seizure or otherwise preclude the same.

(4) The Mississippi Bureau of Narcotics shall adopt rules and regulations that are necessary to implement this section.

(5) For purposes of this section, the term "law enforcement agency" includes any person or entity having seizure authority under Section 41-29-159.

(6) Failure to substantially comply with the provisions of this section shall disqualify the seizing law enforcement agency from applying for or receiving federal or state grants until such time as in compliance with this section.

(7) The provisions of this section shall be required only at such time as the Legislature has appropriated funds for the bureau to create and maintain the required website. The website shall be created and functionally operational, not more than twelve (12) months from the date that sufficient funds have been

appropriated for that purpose. The bureau shall provide at least thirty (30) days notice in advance of the date when the website will be operational to each district attorney in the state.

HISTORY:

Laws, 2017, ch. 329, § 1, eff from and after July 1, 2017.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference in the second sentence of (2)(a) by substituting "provisions of paragraph (b) of this subsection" for "provisions of paragraph (b) of this section." The Joint Committee ratified the correction at the August 15, 2017, meeting of the Committee.

Editor's Note —

Section 41-29-176, referred in this section, was repealed by Section 2 of Chapter 484, Laws of 2013, as amended by Section 5 of Chapter 501, Laws of 2014, and as amended by Section 23 of Chapter 452, Laws of 2015, effective July 1, 2018.

§ 41-29-108. Vehicles for use of bureau; liability insurance.

(1) The Commissioner of Public Safety is authorized to accept vehicles which may be available from the federal government for use in enforcement of this article. The commissioner is further authorized to expend reasonable funds from any funds appropriated for the bureau for the delivery, repair and maintenance of such automobiles.

(2) The commissioner is further authorized to rent or lease motor vehicles for undercover missions. Such vehicles shall be used only on specified missions and not as additions to the regularly authorized and budgeted vehicles of the bureau.

HISTORY:

Codes, 1942, § 6831-92; Laws, 1972, ch. 520, § 18; Laws, 1984, ch. 495, § 17; reenacted and amended, Laws, 1985, ch. 474, § 14; Laws, 1986, ch. 438, § 26; Laws, 1987, ch. 483, § 27; Laws, 1988, ch. 442, § 24; Laws, 1989, ch. 537, § 23; Laws, 1990, ch. 518, § 24; Laws, 1991, ch. 618, § 23; Laws, 1992, ch. 491, § 24; Laws, 2004, ch. 595, § 18, eff from and after July 1, 2004.

Cross References —

Participation in a comprehensive plan of one or more policies of liability insurance procured and administered by the Department of Finance and Administration, see § 11-46-17.

Motor Vehicle Safety Responsibility Law, see §§ 63-15-1 et seq.

§ 41-29-109. Cooperation with bureau of narcotics.

The Mississippi Bureau of Narcotics shall have the full cooperation and use of facilities and personnel of the State Board of Pharmacy, the State Board of Medical Licensure, the State Board of Dental Examiners, the Mississippi Board of Nursing, the State Board of Optometry, the district and county attorneys, and of the Attorney General's office.

It shall be the duty of all duly sworn peace officers of the State of Mississippi to enforce the provisions of this article with reference to illicit narcotic and drug traffic. The provisions of this article may likewise be enforced by agents of the United States Drug Enforcement Administration.

HISTORY:

Codes, 1942, § 6831-54; Laws, 1971, ch. 521, § 4; Laws, 1972, ch. 520, § 3; Laws, 1981, ch. 502, § 13; Laws, 1983, ch. 488, § 35; Laws, 2001, ch. 470, § 1; Laws, 2005, ch. 404, § 6, eff from and after July 1, 2005.

Cross References —

Office of Attorney General, generally, see §§ 7-5-1 et seq.

County attorneys, generally, see §§ 19-23-1 et seq.

District attorneys, generally, see §§ 25-31-1 et seq.

Bureau of Narcotics Work Program, see § 41-29-110.

Cooperative arrangements with federal and other state agencies, see § 41-29-167.

Authority of the commissioner of corrections to authorize the working and housing of offenders in support of the Bureau of Narcotics, see § 47-5-133.

State board of dental examiners, generally, see §§ 73-9-1 et seq.

State board of medical licensure, generally, see §§ 73-43-1 et seq.

§ 41-29-110. Bureau of narcotics work program.

The Mississippi Bureau of Narcotics is hereby authorized and empowered to request and to accept the use of persons convicted of an offense, whether a felony or a misdemeanor, for work in support of the bureau. The bureau is authorized to enter into any agreements with the Department of Corrections, the State Parole Board, any criminal court of this state, and any other proper official regarding the working, guarding, safekeeping, clothing and subsistence of such persons performing work for the Mississippi Bureau of Narcotics. Such persons shall not be deemed agents, employees or involuntary servants of the bureau while performing such work or while going to and from work or other specified areas.

HISTORY:

Laws, 1988, ch. 504, § 27, eff from and after passage (approved May 6, 1988).

Cross References —

Authority of the commissioner of corrections to authorize the working and housing of offenders in support of the Bureau of Narcotics, see § 47-5-133.

§ 41-29-111. Powers and duties of bureau; regulation of substances.

(1) The Commissioner of Public Safety shall administer this article and shall work in conjunction and cooperation with the State Board of Pharmacy, county and municipal law enforcement agencies, the district and county attorneys, the Office of the Attorney General and the Mississippi Bureau of Narcotics. The State Board of Health shall work with the bureau in an advisory capacity and shall be responsible for recommending to the Legislature the appropriate schedule for all substances to be scheduled or rescheduled in Sections 41-29-113 through 41-29-121. In making a recommendation regarding a substance, the State Board of Health shall consider the following:

(a)(i) The actual or relative potential for abuse;

(ii) The scientific evidence of its pharmacological effect, if known;

(iii) The state of current scientific knowledge regarding the substance;

(iv) The history and current pattern of abuse;

(v) The scope, duration and significance of abuse;

(vi) The risk to the public health;

(vii) The potential of the substance to produce psychic or physiological dependence liability; and

(viii) Whether the substance is an immediate precursor of a substance already controlled under this article.

(b) After considering the factors enumerated in paragraph (a), the State Board of Health shall make findings with respect thereto and issue a recommendation to control the substance if it finds the substance has a potential for abuse.

(c) If the State Board of Health designates a substance as an immediate precursor, substances that are precursors of the controlled precursor shall not be recommended for control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the State Board of Health, it shall recommend the control of the substance under this article at the next session of the Legislature.

(e)(i) Authority to control under this article does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in the Local Option Alcoholic Beverage Control Law, being Sections 67-1-1 through 67-1-91, and the Tobacco Tax Law of 1934, being Sections 27-69-1 through 27-69-77. It is the intent of the Legislature of the State of Mississippi that the bureau shall concentrate its efforts and resources on the enforcement of the Uniform Controlled Substances Law with respect to illicit narcotic and drug traffic in the state.

(ii) The controlled substances listed in the schedules in Sections 41-29-113 through 41-29-121 are included by whatever official, common, usual, chemical or trade name designated.

(f) The State Board of Health shall recommend the exclusion of any nonnarcotic substance from a schedule if such substance may, under the Federal Food, Drug and Cosmetic Act and the laws of this state, be lawfully sold over the counter without a prescription.

HISTORY:

Codes, 1942, § 6831-55; Laws, 1971, ch. 521, § 5; Laws, 1972, ch. 520, § 4; Laws, 1983, ch. 522, § 13; Laws, 2004, ch. 595, § 19; Laws, 2009, ch. 469, § 3, eff from and after July 1, 2009.

Cross References —

Distribution of the Code of 1972, see § 1-1-11.

Office of Attorney General, generally, see §§ 7-5-1 et seq.

County attorneys, generally, see §§ 19-23-1 et seq.

District attorneys, generally, see §§ 25-31-1 et seq.

State board of health, generally, see §§ 41-3-1.1 et seq.

Exclusion of certain isomer and salts from definition of "opiate," unless designated as controlled under authority of this section, see § 41-29-105(t).

Bureau of Narcotics Work Program, see § 41-29-110.

Revision and republication of schedules, see § 41-29-123.

Authority of the commissioner of corrections to authorize the working and housing of offenders in support of the Bureau of Narcotics, see § 47-5-133.

JUDICIAL DECISIONS

1. In general.

Under the Uniform Controlled Substances Law, the penalties prescribed for violations thereof are inextricably tied to the various schedules, and therefore the portions of Code 1972, § 41-29-111 by which the state board of health is given the authority to move a substance from one schedule to another, to add substances to any schedule, and to delete substances from any schedule are an unconstitutional attempt to delegate the authority to define crimes and fix the punishment therefor which is vested exclusively in the legislature; such unconstitutional portions are separable from the remaining provisions of the Uniform Controlled Substances Law. Howell v. State, 300 So. 2d 774, 1974 Miss. LEXIS 1632, 1974 Miss. LEXIS 1633 (Miss. 1974).

RESEARCH REFERENCES

ALR.

Validity of delegation to Drug Enforcement Administration of authority to schedule or reschedule drugs subject to Controlled Substances Act (21 USCS §§ 801 et seq). 47 A.L.R. Fed. 869.

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 19- 23, 40.

§ 41-29-112. Special contract agents or investigators.

(1) The director of the bureau of narcotics is authorized to retain on a contractual basis such persons as he shall deem necessary to detect and apprehend violators of the criminal statutes pertaining to the possession, sale or use of narcotics or other dangerous drugs.

(2) Those persons contracting with the director of the bureau of narcotics, pursuant to subsection (1), shall be known as, and are hereinafter referred to as, “special contract agents.”

(3) The investigative services provided for in this section shall be designed to support local law enforcement efforts.

(4) Special contract investigators shall have all powers necessary and incidental to the fulfillment of their contractual obligations, including the power of arrest when authorized by the director of the bureau of narcotics.

(5) No person shall be a special contract investigator unless he is at least eighteen (18) years of age.

(6) The director of the bureau of narcotics shall conduct a background investigation of all potential special contract investigators. If the background investigation discloses a criminal record, the applicant shall not be retained without the express approval of the director of the bureau of narcotics. Any matters pertaining to special contract investigators shall be exempt from the provisions of a law relating to meetings open to the public, approved as now or hereafter amended.

(7) Any contract pursuant to subsection (1) shall be:

(a) Reduced to writing; and

(b) Terminable upon written notice by either party, and shall in any event terminate one (1) year from the date of signing; and

(c) Approved as to form by the attorney general.

Such contracts shall not be public records and shall not be available for inspection under the provisions of a law providing for the inspection of public records as now or hereafter amended.

(8) Special contract investigators shall not be considered employees of the bureau of narcotics for any purpose.

(9) The director of the bureau of narcotics shall have all powers necessary and incidental to the effective operation of this section.

(10) Notwithstanding any other provisions contained in this section, all said contracts and related matters shall be made available to the legislative budget office and the state fiscal management board.

HISTORY:

Laws, 1974, ch. 414; Laws, 1984, ch. 488, § 208, eff from and after July 1, 1984.

Editor's Notes —

Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration".

Cross References —

Joint Legislative Budget Committee and Legislative Budget Office, generally, see §§ 27-103-101 et seq.

State fiscal management board, see §§ 27-104-1 et seq.

Penalty for impersonating an agent of the bureau of narcotics, see § 41-29-159.

§ 41-29-113. Schedule I of controlled substances.

The controlled substances listed in this section are included in Schedule I.

SCHEDULE I

(a) **Opiates.** Any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) Acetyl-alpha-methylfentanyl;

(2) Acetyl Fentanyl N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide;

(3) AH-7921 (3,4-dichloro-N-[(1-dimethylamino) cyclohexylmethyl-]benzamide);

(4) Acetylmethadol;

(5) Allylprodine;

(6) Alphacetylmethadol, except levo-alphacetylmethadol (levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);

(7) Alphameprodine;

(8) Alphamethadol;

(9) Alpha-methylfentanyl;

(10) Alpha-methylthiofentanyl;

(11) Benzethidine;

(12) Betacetylmethadol;

(13) Beta-hydroxyfentanyl;

(14) Beta-hydroxy-3-methylfentanyl;

(15) Betameprodine;

(16) Betamethadol;

(17) Betaprodine;

(18) Clonitazene;

(19) Dextromoramide;

(20) Diampromide;

(21) Diethylthiambutene;

(22) Difenoxin;

(23) Dimenoxadol;

(24) Dimepheptanol;

(25) Dimethylthiambutene;

(26) Dioxaphetyl butyrate;

(27) Dipipanone;

(28) Ethylmethylthiambutene;

(29) Etonitazene;

(30) Etoxeridine;

(31) Furanyl Fentanyl, N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide;

(32) Furethidine;

(33) Hydroxypethidine;

(34) Ketobemidone;

(35) Levomoramide;

(36) Levophenacylmorphan;

(37) 3-methylfentanyl;

(38) 3-methylthiofentanyl;

(39) Morpheridine;

(40) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

(41) N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (other names: Butyryl fentanyl);

(42) N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-N-phenylpropionamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (other names: beta-hydroxythiofentanyl);

(43) Noracymethadol;

(44) Norlevorphanol;

(45) Normethadone;

(46) Norpipanone;

(47) Para-fluorofentanyl;

(48) PEPAP (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);

(49) Phenadoxone;

(50) Phenampromide;

(51) Phenomorphan;

(52) Phenoperidine;

(53) Piritramide;

(54) Proheptazine;

(55) Properidine;

(56) Propiram;

(57) Racemoramide;

(58) Thiofentanyl;

(59) Tilidine;

(60) Trimeperidine;

(61) U-47700, 3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide.

(b) **Opium derivatives.** Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;
(2) Acetyldihydrocodeine;
(3) Benzylmorphine;
(4) Codeine methylbromide;
(5) Codeine-N-Oxide;
(6) Cyprenorphine;
(7) Desomorphine;
(8) Dihydromorphine;
(9) Drotebanol;
(10) Etorphine (except hydrochloride salt);
(11) Heroin;
(12) Hydromorphinol;
(13) Methyldesorphine;
(14) Methyldihydromorphine;
(15) Monoacetylmorphine;
(16) Morphine methylbromide;
(17) Morphine methylsulfonate;
(18) Morphine-N-Oxide;
(19) Myrophine;
(20) Nicocodeine;
(21) Nicomorphine;
(22) Normorphine;
(23) Pholcodine;
(24) Thebacon.

(c) **Hallucinogenic substances.** Any material, compound, mixture or preparation which contains any quantity of the following substances, their salts, isomers (whether optical, positional, or geometric) and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Alpha-ethyltryptamine;
(2) 4-bromo-2,5-dimethoxy-amphetamine;
(3) 4-bromo-2,5-dimethoxyphenethylamine;
(4) 2,5-dimethoxyamphetamine;
(5) 2,5-dimethoxy-4-ethylamphetamine (DOET);
(6) 2,5-dimethoxy-4-(n)-propylthiophenethylamine 2C-T-7);
(7) 4-methoxyamphetamine;
(8) 5-methoxy-3,4-methylenedioxy-amphetamine;
(9) 4-methyl-2,5-dimethoxy-amphetamine;
(10) 3,4-methylenedioxy amphetamine;
(11) 3,4-methylenedioxymethamphetamine (MDMA);
(12) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA);

(13) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy MDA, N-OHMDA, and N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine);

(14) 3,4,5-trimethoxy amphetamine;

(15) 5-methoxy-N,N-dimethyltryptamine (5-MeO-DMT);

(16) Alpha-methyltryptamine (also known as AMT);

(17) Bufotenine;

(18) Diethyltryptamine;

(19) Dimethyltryptamine;

(20) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT);

(21) Ibogaine;

(22) Lysergic acid diethylamide (LSD);

(23)(A) Marijuana (Cannabidiol contained in a legend drug product approved by the Federal Food and Drug Administration or obtained under Section 41-29-136 is exempt under Schedule I);

(B) Hashish;

(24) Mescaline;

(25) Parahexyl;

(26) Peyote;

(27) N-ethyl-3-piperidyl benzilate;

(28) N-methyl-3-piperidyl benzilate;

(29) Psilocybin;

(30) Psilocyn;

(31) Tetrahydrocannabinols, meaning tetrahydrocannabinols contained in a plant of the genus Cannabis (cannabis plant), as well as the synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant such as the following:

(A) 1 cis or trans tetrahydrocannabinol;

(B) 6 cis or trans tetrahydrocannabinol;

(C) 3,4 cis or trans tetrahydrocannabinol.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of atomic positions are covered.)

("Tetrahydrocannabinols" excludes dronabinol and nabilone.)

However, the following products are exempted from control:

(i) THC-containing industrial products made from cannabis stalks (e.g., paper, rope and clothing);

(ii) Processed cannabis plant materials used for industrial purposes, such as fiber retted from cannabis stalks for use in manufacturing textiles or rope;

(iii) Animal feed mixtures that contain sterilized cannabis seeds and other ingredients (not derived from the cannabis plant) in a formula designed, marketed and distributed for nonhuman consumption;

(iv) Personal care products that contain oil from sterilized cannabis seeds, such as shampoos, soaps, and body lotions (if the products do not cause THC to enter the human body); and

(v) Processed cannabis plant extract, oil or resin with a minimum ratio of twenty-to-one cannabidiol to tetrahydrocannabinol (20:1 cannabidiol:tetrahydrocannabinol), and diluted so as to contain at least fifty (50) milligrams of cannabidiol per milliliter, with not more than two and one-half (2.5) milligrams of tetrahydrocannabinol per milliliter;

(32) Phencyclidine;

(33) Ethylamine analog of phencyclidine (PCE);

(34) Pyrrolidine analog of phencyclidine (PHP, PCPy);

(35) Thiophene analog of phencyclidine;

(36) 1-[1-(2-thienyl)cyclohexyl] pyrrolidine (TCPy);

(37) 4-methylmethcathinone (mephedrone);

(38) 3,4-methylenedioxypyrovalerone (MDPV);

(39) 2-(2,5-dimethoxy-4-ethylphenyl)ethanamine (2C-E);

(40) 2-(2,5-dimethoxy-4-methylphenyl)ethanamine (2C-D);

(41) 2-(4-chloro-2,5-dimethoxyphenyl)ethanamine (2C-C);

(42) 2-(4-iodo-2,5-dimethoxyphenyl)ethanamine (2C-I); or 2,5-dimethoxy-4-iodophenethylamine;

(43) 2-[4-(ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2);

(44) 2-[4-(isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4);

(45) 2-(2,5-dimethoxyphenyl)ethanamine (2C-H);

(46) 2-(2,5-dimethoxy-4-nitro-phenyl)ethanamine (2C-N);

(47) 2-(2,5-dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P);

(48) 3,4-methylenedioxy-N-methylcathinone(methylone);

(49) 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36);

(50) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82);

(51) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine or N-[(2-methoxyphenyl)methyl]ethanamine (25I-NBOMe; 2C-I-NBOMe; 25I; Cimbi-5);

(52) 7-bromo-5-(2-chlorophenyl)-1,3-dihydro-2H-1, 4-benzodiazepin-2-one (also known as Phenazepam);

(53) 7-(2-chlorophenyl)-4-ethyl-13-methyl-3-thia-1,8, 11,12-tetraazatricyclo[8.3.0.0]trideca-2(6),4,7,10,12-pentaene (also known as Etizolam);

(54) Salvia divinorum;

(55) Synthetic cannabinoids. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of a synthetic cannabinoid found in any of the following chemical groups, whether or not substituted to any extent, or any of those groups which contain any synthetic cannabinoid salts, isomers, or salts of isomers, whenever the existence of such salts, isomers, or salts of isomers is possible within the specific chemical designation, including all synthetic cannabinoid chemical analogues in such groups:

(A) (6aR,10aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c] chromen-1-ol (also known as HU-210 or 1,1-dimethylheptyl-11-hydroxy-delta8-tetrahydrocannabinol);

(B) Naphthoylindoles and naphthylmethylindoles, being any compound structurally derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane, whether or not substituted in the indole ring to any extent, or in the naphthyl ring to any extent;

(C) Naphthoylpyrroles, being any compound structurally derived from 3-(1-naphthoyl)pyrrole, whether or not substituted in the pyrrole ring to any extent, or in the naphthyl ring to any extent;

(D) Naphthylmethylindenes, being any compound structurally derived from 1-(1-naphthylmethyl)indene, whether or not substituted in the indene ring to any extent or in the naphthyl ring to any extent;

(E) Phenylacetylindoles, being any compound structurally derived from 3-phenylacetylindole, whether or not substituted in the indole ring to any extent or in the phenyl ring to any extent;

(F) Cyclohexylphenols, being any compound structurally derived from 2-(3-hydroxycyclohexyl)phenol, whether or not substituted in the cyclohexyl ring to any extent or in the phenolic ring to any extent;

(G) Benzoylindoles, whether or not substituted in the indole ring to any extent or in the phenyl ring to any extent;

(H) Adamantoylindoles, whether or not substituted in the indole ring to any extent or in the adamantoyl ring system to any extent;

(I) Tetrahydro derivatives of cannabinol and 3-alkyl homologues of cannabinol or of its tetrahydro derivatives, except where contained in cannabis or cannabis resin;

(J) 3-Cyclopropylmethanone indole or 3-Cyclobutylmethanone indole or 3-Cyclopentylmethanone indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the cyclopropyl, cyclobutyl or cyclopentyl rings to any extent;

(K) Quinolinyl ester indoles, being any compound structurally derived from 1H-indole-3carboxylic acid-8-quinolinyl ester, whether or not substituted in the indole ring to any extent or the quinolone ring to any extent;

(L) 3-carboxamide-1H-indazoles, whether or not substituted in the indazole ring to any extent and substituted to any degree on the carboxamide nitrogen and 3-carboxamide-1H-indoles, whether or not substituted in the indole ring to any extent and substituted to any degree on the carboxamide nitrogen;

(M) Cycloalkanemethanone Indoles, whether or not substituted at the nitrogen atom on the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the cycloalkane ring to any extent.

(d) **Depressants.** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Gamma-hydroxybutyric acid (other names include: GHB, gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);

(2) Mecloqualone;

(3) Methaqualone.

(e) **Stimulants.** Any material, compound, mixture or preparation which contains any quantity of the following central nervous system stimulants including optical salts, isomers and salts of isomers unless specifically excepted or unless listed in another schedule:

(1) Aminorex;

(2) N-benzylpiperazine (also known as BZP; 1-benzylpiperazine);

(3) Cathinone;

(4) Fenethylline;

(5) Methcathinone;

(6) 4-methylaminorex (also known as 2-amino-4-methyl-5-phenyl-2-oxazoline);

(7) N-ethylamphetamine;

(8) Any material, compound, mixture or preparation which contains any quantity of N,N-dimethylamphetamine. (Other names include: N,N,-alpha-trimethyl-benzeneethanamine, and N,N-alphatrimethylphenethylamine);

(9) **Synthetic cathinones.**

(A) Unless listed in another schedule, any compound other than bupropion that is structurally derived from 2-Amino-1-phenyl-1-propanone by modification in any of the following ways:

(i) By substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents;

(ii) By substitution at the 3-position with an alkyl substituent;

(iii) By substitution at the nitrogen atom with alkyl or dialkyl groups, or by inclusion of the nitrogen atom in a cyclic structure.

(B) The compounds covered in this paragraph (9) include, but are not limited to, any material compound, mixture or preparation which contains any quantity of a synthetic cathinone found in any of the following compounds, whether or not substituted to any extent, or any of these compounds which contain any synthetic cathinone, or salts, isomers, or salts of isomers, whenever the existence of such salts, isomers or salts of isomers is possible, unless specifically excepted or listed in another schedule:

(i) 4-methyl-N-ethylcathinone ("4-MEC");

(ii) 4-methyl-alpha-pyrrolidinopropiophenone ("4-MePPP");

(iii) Alpha-pyrrolidinopentiophenone ("α-PVP");

(iv) 1-(1,3-benzodioxol-5-yl)-2-(methylamino)butan-1-one ("butylone");

(v) 2-(methylamino)-1-phenylpentan-1-one ("pentedrone");

(vi) 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one ("pentylone");

(vii) 4-fluoro-N-methylcathinone ("4-FMC");

(viii) 3-fluoro-N-methylcathinone ("3-FMC");

(ix) 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one ("naphyrone"); and

(x) Alpha-pyrrolidinobutiophenone ("α-PBP").

HISTORY:

Codes, 1942, § 6831-57; Laws, 1971, ch. 521, § 7; Laws, 1974, ch. 415, § 2; Laws, 1975, ch. 465, § 1; Laws, 1977, ch. 391, § 1; Laws, 1978, ch. 404, § 1; Laws, 1979, ch. 368, § 1; Laws, 1981, ch. 502, § 2; Laws, 1982, ch. 402, § 1; Laws, 1983, ch. 404, § 1; Laws, 1985, ch. 308, § 1; Laws, 1986, ch. 512, § 1; Laws, 1987, ch. 475, § 1; Laws, 1988, ch. 319, § 1; Laws, 1989, ch. 568, § 1; Laws, 1995, ch. 443, § 1; Laws, 2001, ch. 491, § 1; Laws, 2008, ch. 491, § 1; Laws, 2010 2nd Ex Sess, ch. 27; Laws, 2011, ch. 363, § 1; Laws, 2012, ch. 493, § 1; Laws, 2014, ch. 501, § 1; Laws, 2016, ch. 392, § 1; Laws, 2017, ch. 370, § 2; Laws, 2017, ch. 394, § 1, eff from and after July 1, 2017; Laws, 2018, ch. 413, § 1, eff from and after passage (March 21, 2018).

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in subdivision (c)(55) by substituting "cannabinol" for "cannabiniol" the second time it appears in (I) and substituting "3-carboxamide-IH-indazoles" for "carbozamide-IH-indazoles" in (L). The Joint Committee ratified the corrections at its August 5, 2016, meeting.

Section 2 of Chapter 370, Laws of 2017, effective from and after passage (approved March 20, 2017), amended this section. Section 1 of Chapter 394, Laws of 2017, effective from and after July 1, 2017 (approved March 27, 2017), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section amended within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 15, 2017, meeting of the Committee.

Editor's Notes —

The preamble to Laws of 2010, 2nd Extraordinary Session, ch. 27, provides:

"WHEREAS, the Mississippi Legislature finds that there is a growing use of the unregulated synthetic cannabinoids commonly known as K2 or synthetic marihuana; and

"WHEREAS, preliminary studies indicate that the three synthetic cannabinoid substances unregulated in Mississippi are from three to over 100 times more potent than THC, the active ingredient found in marihuana; and

"WHEREAS, many states as well as the federal government have already included one or more of these chemical compounds on Schedules of Controlled Substances, but none of these chemicals are currently listed on Mississippi's Schedule of Controlled Substances; and

"WHEREAS, synthetic cannabinoids are referred to as the new marihuana, and K2 is gaining in popularity at an alarming rate among high school and college students and persons on probation and parole; and

"WHEREAS, while having the same or stronger physiological effects as high potency marihuana, synthetic marihuana or K2 does not show a positive reading in a urinalysis test which adds to the desirability and increased growth among drug abusers and increases the threat to public health and safety by avoiding detection; and

"WHEREAS, the Mississippi Legislature should address the growing threat of synthetic cannabinoids to the health, safety and welfare of our citizens before the problem becomes epidemic in the State of Mississippi."

Laws of 2011, ch. 363, § 3, effective from and after March 11, 2011, provides:

"SECTION 3. Section 1 of this act shall be known as the DeWayne Crenshaw Act."

Laws of 2014, ch. 501, § 6 provides:

"SECTION 6. Sections 1 and 3 of this act shall take effect and be in force from and after its passage, and the remainder of this act shall take effect and be in force from and after July 1, 2014."

Amendment Notes —

The first 2017 amendment (ch. 370), effective March 20, 2017, rewrote (c)(31)(C)(v), which read: "Processed cannabis plant extract, oil or resin that contains more than fifteen percent (15%) cannabidiol (CBD) or a dilution of the resin that contains at least fifty (50) milligrams of cannabidiol per milliliter, but not more than one-half of one percent (.5%) of tetrahydrocannabinol."

The second 2017 amendment (ch. 394), in (a), added (3), (40) and (41), and redesignated the remaining paragraphs accordingly; in (e), added "Synthetic cathinones (A)" at the beginning of the introductory paragraph of (9), added (9)(B), deleted the former introductory paragraph of (10), which read: "Synthetic cathinones. Unless specifically excepted or unless listed in another schedule, any material compound, mixture or preparation which contains any quantity of a synthetic cathinone found in any of the following compounds, whether or not substituted to any extent, or any of these compounds which contain any synthetic cathinone, or salts, isomers, or salts of isomers, whenever the existence of such salts, isomers or salts of isomers is possible," and redesignated former (10)(i) through (x) as (9)(B)(i) through (x).

The 2018 amendment, effective March 21, 2018, in (a), added (31), redesignated the remaining paragraphs accordingly, added (61), and made minor stylistic changes; substituted "Opium derivatives" for "Opiate derivatives" in the heading of (b); and added "(Cannabidiol contained in a legend...is exempt under Schedules I)" at the end of (c)(23)(A).

Cross References —

Board's power to add to, delete or reschedule substances listed in schedules of controlled substances, see § 41-29-111.

Recommendations to Legislature as to appropriate substances to be scheduled under §§ 41-29-113 through 41-29-121, see § 41-29-111.

Registration of manufacturers and distributors, see § 41-29-127.

Requirement of order forms for distribution, see § 41-29-135.

Prohibited acts and penalties for violations thereof with respect to controlled substances scheduled in this section, see § 41-29-139.

Heavier penalty to adult violating controlled substance prohibitions with respect to providing substance to a minor, see § 41-29-145.

Forfeiture of controlled substances and plants from which they are derived, see § 41-29-153.

Automatic control and listing of substances controlled under prior law but omitted from present schedules, see § 41-29-173(c).

JUDICIAL DECISIONS

ANALYSIS

1. Constitutionality
2. In general.
3. Amending indictment.
4. Sentence.
5. Indictment sufficient
6. Variance in Indictment

1. Constitutionality

In a case in which defendant was convicted of selling synthetic marijuana, Mississippi's schedule of controlled substances was not unconstitutionally vague because, although the lab technician who analyzed the substance could only say that it was AB-FUBINACA or a related isomer, nothing suggested that the substance was innocuous; it was referred to as "spice" and offered as a substitute for marijuana; the active ingredient had been laced on plant material, mimicking the appearance of marijuana; it was sold at $200 for eight grams; the exchange was made in a parking lot; and defendant boasted of the substance's psychoactive potency. Maged Muthanna Saleh Qasoon v. State, 232 So. 3d 831, 2017 Miss. App. LEXIS 679 (Miss. Ct. App. 2017).

2. In general.

Defendant's conviction of conspiracy to possess heroin was sustained by evidence showing that she had traveled 2,000 miles from San Diego, California to Jackson, Mississippi with codefendant, that a telephone call to her parents' home notified co-defendant of the arrival of the heroin, that she waited in the car while co-defendant picked up heroin, and that her purse contained a substance used as cutting agent for heroin. Davis v. State, 485 So. 2d 1055, 1986 Miss. LEXIS 2778 (Miss. 1986).

Tetrahydrocannabinol (THC) is a controlled substance under § 41-29-113. Ervin v. State, 431 So. 2d 130, 1983 Miss. LEXIS 2576 (Miss. 1983).

3. Amending indictment.

Denial of appellant inmate's motion for post-conviction collateral relief was proper because the original indictment charging appellant with manufactuing a controlled substance referred to the substance as marijuana but cited the statute section referencing ibogaine, and amending the indictment to correct the citation did not alter the essential facts of the offense, nor did it prejudice the inmate's defense. Brown v. State, 12 So. 3d 586, 2009 Miss. App. LEXIS 362 (Miss. Ct. App. 2009).

4. Sentence.

Appellate court overruled the petitioner's argument that his twenty-five year sentence for possession of marihuana with intent to sell was disproportionate because the petitioner had other drug charges pending against him; thus, he did not fit the definition of a first offender, and the petitioner was indicted for possession of more than a kilogram but less than five kilos of marihuana, and he potentially could have received up to a thirty year sentence. White v. State, 921 So. 2d 402, 2006 Miss. App. LEXIS 113 (Miss. Ct. App. 2006).

5. Indictment sufficient

Defendant's indictment was not insufficient because it alleged possession of AB-FUBINACA, rather than the chemical description applicable to the compound given in this statute, as the use of a code or trade name for a controlled substance rather than a chemical description did not fail to allege an essential element; AB FUBINACA was apparently a code name for a specific synthetic cannabinoid; the name appeared to be in widespread use; although AB-FUBINACA was not specifically listed in this statute, it was prohibited as it was a compound which had a skeletal molecular structure which was composed of an indazole carboxamide compound; and the defense was not prejudiced as defendant's attorney knew what AB-FUBINACA was. Maged Muthanna Saleh Qasoon v. State, 232 So. 3d 831, 2017 Miss. App. LEXIS 679 (Miss. Ct. App. 2017).

6. Variance in Indictment

Evidence was sufficient to convict defendant of selling AB-FUBINACA because the proof at trial showed that he did in fact commit that crime as he was just as guilty of the same offense had the substance been an isomer of AB-FUBINACA rather than AB-FUBINACA itself; and the variance between the indictment alleging the distribution of AB-FUBINACA, and the proof that he distributed an isomer of AB-FUBINACA was not material. Maged Muthanna Saleh Qasoon v. State, 232 So. 3d 831, 2017 Miss. App. LEXIS 679 (Miss. Ct. App. 2017).

RESEARCH REFERENCES

ALR.

Sufficiency of prosecution proof that substance defendant is charged with possessing or selling, or otherwise unlawfully dealing in, is marijuana. 75 A.L.R.3d 717.

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 10, 32 et seq.

CJS.

72 C.J.S., Poisons §§ 2-4.

§ 41-29-115. Schedule II of controlled substances.

(A) The controlled substances listed in this section are included in Schedule II.

SCHEDULE II

(a) **Substances, vegetable origin or chemical synthesis.** Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxegol, naloxone and naltrexone, but including the following:

(i) Codeine;
(ii) Dihydroetorphine;
(iii) Ethylmorphine;
(iv) Etorphine hydrochloride;
(v) Granulated opium;
(vi) Hydrocodone, whether alone or in combination with any material, compound, mixture or preparation;
(vii) Hydromorphone;
(viii) Metopon;
(ix) Morphine;
(x) Opium extracts;
(xi) Opium fluid extracts;
(xii) Oripavine;
(xiii) Oxycodone;
(xiv) Oxymorphone;
(xv) Powdered opium;
(xvi) Raw opium;
(xvii) Thebaine;
(xviii) Tincture of opium.

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Coca leaves and any salt, compound, derivative, or preparation of cocaine or coca leaves, including cocaine and ecgonine and any salt, compound, derivative, isomer, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including:

(i) Decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine; or
(ii) Ioflupane;

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy).

(b) **Opiates.** Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specified chemical designation, dextrorphan and levopropoxyphene excepted:

(1) Alfentanil;
(2) Alphaprodine;
(3) Anileridine;
(4) Bezitramide;
(5) Bulk dextropropoxyphene (nondosage forms);
(6) Carfentanil;
(7) Dihydrocodeine;
(8) Diphenoxylate;

(9) Fentanyl;

(10) Isomethadone;

(11) Levo-alphacetylmethadol (levo-alpha-acetylmethadol, levomethadyl acetate, LAAM);

(12) Levomethorphan;

(13) Levorphanol;

(14) Metazocine;

(15) Methadone;

(16) Methadone-intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;

(17) Moramide-intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid;

(18) Pethidine (meperidine);

(19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

(20) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

(21) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(22) Phenazocine;

(23) Piminodine;

(24) Racemethorphan;

(25) Racemorphan;

(26) Remifentanil;

(27) Sufentanil;

(28) Tapentadol;

(29) Thiafentanil, 4-(methoxycarbonyl)-4-(N-phenmethoxyacetamido)-1-[2-(thienyl)ethyl]piperidine.

(c) **Stimulants.** Any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(2) Phenmetrazine and its salts;

(3) Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;

(4) Methylphenidate and its salts;

(5) Lisdexamfetamine, its salts, isomers and salts of isomers.

(d) **Depressants.** Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Amobarbital;

(2) Secobarbital;

(3) Pentobarbital;

(4) Glutethimide.

(e) **Hallucinogenic substances.**

(1) Dronabinol oral solution [(-)-delta-9-trans-tetrahydrocannabinol (delta-9-THC)];

(2) Nabilone [other names include: (+/-)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo-(b,d)pyran-9-one].

(f) **Immediate precursors.** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Amphetamine and methamphetamine immediate precursor: Phenylacetone (other names include: phenyl-2-propanone; P2P; benzyl methyl ketone; and methyl benzyl ketone);

(2) Phencyclidine immediate precursors:

(i) 1-phenylcyclohexylamine;

(ii) 1-piperidinocyclohexanecarbonitrile (PCC);

(3) Fentanyl immediate precursor: 4-anilino-N-phenethyl-4-piperidine (ANPP).

(B) Any material, compound, mixture or preparation which contains any quantity of a Schedule II controlled substance and is listed as an exempt substance in 21 CFR, Section 1308.24 or 1308.32, shall be exempted from the provisions of the Uniform Controlled Substances Law.

HISTORY:

Codes, 1942 § 5831-58; Laws, 1971, ch. 521, § 8; Laws, 1975, ch. 465, § 2; Laws, 1978, ch. 404, § 2; Laws, 1979, ch. 368, § 2; Laws, 1981, ch. 502, § 3; Laws, 1982, ch. 402, § 2; Laws, 1983, ch. 404, § 2; Laws, 1985, ch. 308, § 2; Laws, 1987, ch. 475, § 2; Laws, 1988, ch. 319, § 2; Laws, 1989, ch. 568, § 2; Laws, 1995, ch. 443, § 2; Laws, 2000, ch. 427, § 1; Laws, 2008, ch. 491, § 2; Laws, 2009, ch. 402, § 1; Laws, 2011, ch. 449, § 1; Laws, 2016, ch. 392, § 2; Laws, 2017, ch. 394, § 2, eff from and after July 1, 2017; Laws, 2018, ch. 413, § 2, eff from and after passage (March 21, 2018).

Amendment Notes —

The 2017 amendment deleted former (A)(g), which read: "Other substances. Pentazocine and its salts in injectable dosage form."

The 2018 amendment, effective March 21, 2018, in (A)(b), added (29) and made a minor punctuation change; and in (A)(e), added (1) and added the (2) designation.

Cross References —

Board's power to add to, delete or reschedule substances listed in schedules of controlled substances, see § 41-29-111.

Registration of manufacturers and distributors, see § 41-29-127.

Requirement of order forms for distribution, see § 41-29-135.

Requirement of prescriptions, see § 41-29-137.

Prohibited acts and penalties for violations thereof with respect to controlled substances scheduled in this section, see § 41-29-139.

Heavier penalty to adult violating controlled substance prohibitions with respect to providing substance to a minor, see § 41-29-145.

Forfeiture of controlled substances and plants from which they are derived, see § 41-29-153.

Automatic control and listing of substances controlled under prior law but omitted from present schedules, see § 41-29-173(c).

JUDICIAL DECISIONS

ANALYSIS

1. Indictment.
2. Separate incidents; double jeopardy.
3. Evidence — generally; admissibility.
4. —Sufficiency.
5. Guilty pleas.
6. Sentencing.
7. Post-conviction proceedings.

1. Indictment.

Record reflected that defendant was convicted and sentenced for possession of a Schedule III substance, not a Schedule II substance, the State made no objection or attempt to classify the drug as a Schedule II substance, and defendant was not given the maximum sentence, such that he suffered no prejudice from the failure to identify in the indictment whether he was being charged with the sale of a Schedule II or Schedule III drug. Riley v. State, 126 So. 3d 1007, 2013 Miss. App. LEXIS 832 (Miss. Ct. App. 2013).

In a prosecution for the unlawful sale of cocaine, the indictment charging the defendant with selling cocaine was sufficient since cocaine is a well known derivative of coca leaves and coca leaves are included as a controlled substance in Schedule II. Coleman v. State, 388 So. 2d 157, 1980 Miss. LEXIS 2105 (Miss. 1980).

In a prosecution for unlawful possession of a controlled substance described as preludin, the omission of a recital in the indictment that preludin contained phenmetrazine was an omission of substance, so that the trial court was without power under Code 1972 § 99-7-21 to allow the state to amend the indictment to correct the omission, notwithstanding defendant's failure to demur or otherwise challenge the sufficiency of the indictment; in order to make out a prima facie case under the indictment, it was necessary for the state to prove extrinsic facts showing that preludin contained phenmetrazine, a controlled substance under Code 1972 § 41-29-115, since preludin itself is not designated as a controlled substance. Brewer v. State, 351 So. 2d 535, 1977 Miss. LEXIS 1940 (Miss. 1977).

2. Separate incidents; double jeopardy.

Separate prosecutions for sales of illegal controlled substances, arising from incidents occurring one week apart from each other, do not violate double jeopardy even where same undercover agent has induced sales at same general location using same modus operandi. Barnette v. State, 478 So. 2d 800, 1985 Miss. LEXIS 2282 (Miss. 1985).

3. Evidence — generally; admissibility.

Where the evidence showed that drugs and paraphernalia were found in a ditch where a car had been located after an accident, it was reasonable to infer that the drugs were connected to the car and that someone had thrown them out; the jury was entitled to reject defendant's story that the drugs found in the ditch belonged to someone else. Jones v. State, 877 So. 2d 562, 2004 Miss. App. LEXIS 663 (Miss. Ct. App. 2004).

In a prosecution for the unlawful manufacture of methamphetamine, the court properly permitted the introduction into evidence of an envelope on which the words "ephedrine hydrochloride," "methamphetamine 65%," and "ritalin" were written to show that the defendant knew that boiling Vicks Inhaler would produce a controlled form of methamphetamine. Crosswhite v. State, 732 So. 2d 856, 1998 Miss. LEXIS 631 (Miss. 1998).

An additional quantity of a substance retained by the defendant after she sold cocaine to a confidential informant could not be used to support a conviction for possession of cocaine with intent to distribute, where there was no chemical analysis adequate to show that the substance retained was an illegal controlled substance. Clayton v. State, 582 So. 2d 1019, 1991 Miss. LEXIS 366 (Miss. 1991).

In a prosecution for sale of cocaine, photographs of the cocaine were properly allowed into evidence, where the cocaine was entirely consumed in the crime lab's chemical analysis, the prosecution properly qualified the photographs as depicting the substance purchased from the defendant, and there was no suggestion or inference in the record that the original substance was destroyed in bad faith. Gibson v. State, 580 So. 2d 739, 1991 Miss. LEXIS 320 (Miss. 1991).

Admission into evidence, over defense objections, of several contraband substances not mentioned in indictment charging defendant with possession of meperdine was reversible error, where such introduction was not necessary to show identity, intent or motive, and was not so interwoven with the offense charged that it could not be separated. Bolin v. State, 489 So. 2d 1091, 1986 Miss. LEXIS 2486 (Miss. 1986).

In context of drug case, state may introduce proof regarding nature of drug, manner in which it is used, effect it has upon individual who uses it and related matters; accordingly, state's evidence that Pentazocine, controlled substance, is customarily used with Tripelennamine, noncontrolled substance, in set of one tablet each to produce heroin like effect and that defendant charged with sale of Pentazocine sold 5 sets to narcotics agent is admissible in prosecution under controlled substances law. Turner v. State, 478 So. 2d 300, 1985 Miss. LEXIS 2270 (Miss. 1985).

4. —Sufficiency.

Indictment did not state that defendant possessed pure hydrocodone, but it was a Schedule II substance, plus, as the tablets admitted into evidence contained hydrocodone and the evidence showed that defendant sold generic Lortab containing 10 milligrams of hydrocodone and 500 milligrams of acetaminophen, the State provided sufficient evidence to support the charges in the indictment. Riley v. State, 126 So. 3d 1007, 2013 Miss. App. LEXIS 832 (Miss. Ct. App. 2013).

Samples of defendant's stomach contents, totaling about 80 grams, that were confirmed to contain methamphetamine provided sufficient evidence to support defendant's conviction for possession of a controlled substance where the evidence also showed that defendant, when approached by the police, chewed up and swallowed a plastic bag alleged to have contained methamphetamine. Lamb v. State, 124 So. 3d 84, 2013 Miss. App. LEXIS 149 (Miss. Ct. App.), cert. denied, 123 So. 3d 450, 2013 Miss. LEXIS 557 (Miss. 2013).

Trial court did not err in denying defendant's motion for a new trial or for judgment notwithstanding the verdict because there was sufficient evidence to support his convictions for possession of methamphetamine with intent to distribute and possession of a firearm while intending to distribute under Miss. Code Ann. § 41-29-115 and Miss. Code Ann. § 41-29-152; defendant admitted to the undercover officer that he had drug paraphernalia in his home and the officers found a .380 loaded handgun, a police scanner, foil, and scales along with drugs during a search of defendant's home, which were relevant factors to be considered by the jury when deciding if defendant was involved in the distribution of drugs. Passman v. State, 937 So. 2d 17, 2006 Miss. App. LEXIS 89 (Miss. Ct. App.), cert. denied, 936 So. 2d 367, 2006 Miss. LEXIS 482 (Miss. 2006), cert. denied, 549 U.S. 1324, 127 S. Ct. 1914, 167 L. Ed. 2d 570, 2007 U.S. LEXIS 3842 (U.S. 2007).

By proving that the pills defendant transferred were Oxycodone, the State proved that she transferred a controlled substance in violation of Miss. Code Ann. § 41-29-139(a)(1) (2001), because, Oxycodone was in fact a Schedule II controlled substance under Schedule II, Miss. Code Ann. § 41-29-115 (A)(a)(1)(xiv) (2001), and the designation of Oxycodone as a controlled substance was not a question of fact for the jury. Lawrence v. State, 928 So. 2d 894, 2005 Miss. App. LEXIS 745 (Miss. Ct. App. 2005).

In a prosecution under Miss. Code Ann. § 97-3-47, where defendant admitted giving the victim two oxycodone pills (for which he had a prescription) and finding her unconscious the next morning; the victim's brother testified that he saw defendant attempt to inject the victim with the drug, that she later appeared intoxicated, became ill, and vomited; a pathologist testified that the oxycodone level in the victim's blood was about 5 ½ times higher than the toxic level of oxycodone; and delivery of oxycodone, a Schedule II controlled substance, was itself a crime, the evidence sufficiently proved that the defendant was guilty of manslaughter by culpable negligence. Nichols v. State, 868 So. 2d 355, 2003 Miss. App. LEXIS 682 (Miss. Ct. App. 2003), cert. denied, 868 So. 2d 345, 2004 Miss. LEXIS 255 (Miss. 2004).

The act of boiling Vicks Inhalers constitutes the illegal manufacture of a Schedule II controlled substance, notwithstanding that both the "Vicks Inhaler" and "l-desoxyephedrine" are specifically descheduled by 21 C.F.R. § 1308.22. Crosswhite v. State, 732 So. 2d 856, 1998 Miss. LEXIS 631 (Miss. 1998).

In a prosecution for distribution of a controlled substance, the State sufficiently established that the crystal methamphetamine distributed by the defendant constituted a "controlled substance," even though the crime lab expert did not identify the substance as being solely methamphetamine but testified that it was a combination of amphetamine and methamphetamine, since a drug which contains any amount of methamphetamine is considered a controlled substance under § 41-29-115(a), (c)(3). Rogers v. State, 599 So. 2d 930, 1992 Miss. LEXIS 123 (Miss.), overruled in part, Mayfield v. State, 612 So. 2d 1120, 1992 Miss. LEXIS 861 (Miss. 1992).

In a prosecution for distribution of crystal methamphetamine, there was sufficient proof as to the type of schedule controlled substance crystal methamphetamine was, where a crime lab expert testified that the substance contained amphetamine and methamphetamine, since methamphetamine is listed as a controlled substance under § 41-29-115(a), (c)(3). Rogers v. State, 599 So. 2d 930, 1992 Miss. LEXIS 123 (Miss.), overruled in part, Mayfield v. State, 612 So. 2d 1120, 1992 Miss. LEXIS 861 (Miss. 1992).

The evidence was sufficient to support a conviction for sale of cocaine where the case for the prosecution consisted of the testimony of an undercover agent who purchased cocaine from the defendant, a surveillance sergeant and a forensic chemist. Doby v. State, 557 So. 2d 533, 1990 Miss. LEXIS 45 (Miss. 1990).

When 2 representatives of law enforcement, neither of them impeached or hostile to state, give certain, unequivocal eye witness testimony which is absolutely impossible to reconcile and only possible conclusion rational jury can reach from testimony is that drug samples at issue in prosecution for sale of controlled substance have been mixed up in some manner at laboratory, or that required drug test has not been made, directed verdict in favor of defendant is proper. Tyler v. State, 478 So. 2d 315, 1985 Miss. LEXIS 2308 (Miss. 1985).

5. Guilty pleas.

Appellate court found no merit to defendant's claim that defendant improperly pled guilty to the transfer of hydrocodone, a Schedule II controlled substance under Miss. Code Ann. § 41-29-115(A)(1)(x), instead of Lortab, which defendant alleged was a Schedule III controlled substance, because Lortab was a pain reliever that contained hydrocodone, thus making it a Schedule II drug. Conlee v. State, 23 So. 3d 535, 2009 Miss. App. LEXIS 284 (Miss. Ct. App.), cert. denied, 22 So. 3d 1193, 2009 Miss. LEXIS 616 (Miss. 2009).

6. Sentencing.

Where appellant was convicted of the unlawful sale of cocaine, a Schedule II controlled substance under Miss. Code Ann. § 41-29-115(A)(a)(4), the trial court imposed a thirty-year sentence pursuant to Miss. Code Ann. § 41-29-139(b)(1). No first-time offender exception was available; the sentence was not excessive. Alexander v. State, 979 So. 2d 716, 2007 Miss. App. LEXIS 755 (Miss. Ct. App. 2007).

7. Post-conviction proceedings.

Petition for post-conviction relief was denied because there was no Eighth Amendment violation based on a 14-year sentence given for a violation of Miss. Code Ann. § 41-29-139 where the maximum sentence was 30 years; there was no inferences of a grossly disproportionate sentence when defendant's sentence was compared to the crime that he committed, and the factors in Solem v. Helm, 463 U.S. 277 (1983), were not considered because no evidence was presented to require such. Moody v. State, 964 So. 2d 564, 2007 Miss. App. LEXIS 429 (Miss. Ct. App. 2007).

Defendant who pleaded guilty to possession of cocaine was properly sentenced to 20 years in the Mississippi Department of Corrections. The circuit court denied defendant's motion for postconviction relief without a hearing because the record showed that his guilty plea was knowing and voluntary. Graves v. State, 872 So. 2d 760, 2004 Miss. App. LEXIS 442 (Miss. Ct. App. 2004).

Appellant sentenced to 30 years in custody upon his plea of guilty to the sale of cocaine was not entitled to post-conviction relief; the sentence was within the appropriate range, and there was a factual basis to support appellant's plea and it was voluntarily made. Vaughn v. State, 964 So. 2d 509, 2006 Miss. App. LEXIS 845 (Miss. Ct. App. 2006), cert. denied, 959 So. 2d 1051, 2007 Miss. LEXIS 389 (Miss. 2007).

Where defendant's testimony was sworn under oath and the trial judge methodically and carefully explained the possible sentences, defendant had the ability to understand the nature and consequences of his guilty plea and it was entered voluntarily and intelligently. Avery v. State, 835 So. 2d 125, 2003 Miss. App. LEXIS 17 (Miss. Ct. App. 2003).

In a prosecution for possession with intent to deliver a controlled substance, in violation of §§ 41-29-115, 41-29-117, and 41-29-119, the record failed affirmatively to establish denial of defendants' right to effective assistance of counsel; nevertheless, affirmance of the judgment of conviction would not preclude defendants from litigating the issue via proper postconviction proceedings. Read v. State, 430 So. 2d 832, 1983 Miss. LEXIS 2525 (Miss. 1983).

RESEARCH REFERENCES

ALR.

Sufficiency of prosecution proof that substance defendant is charged with possessing or selling, or otherwise unlawfully dealing in, is marijuana. 75 A.L.R.3d 717.

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 10, 32 et seq.

CJS.

72 C.J.S., Poisons §§ 2-4.

§ 41-29-117. Schedule III of controlled substances.

(A) The controlled substances listed in this section are included in Schedule III.

SCHEDULE III

(a) **Stimulants.** Any material, compound, mixture, or preparation which contains any quantity of the following substances or their salts, isomers, or salts of isomers, of the following substances:

(1) Benzphetamine;
(2) Chlorphentermine;
(3) Clortermine;

(4) Phendimetrazine.

(b) **Depressants.** Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules;

(2) Unless specifically excepted or unless listed in another schedule, any compound, mixture or preparation containing any of the following substances or any salt of the substances specifically included in this subsection (2) and one or more other active medicinal ingredients which are not listed in any other schedule:

(i) Amobarbital;
(ii) Secobarbital;
(iii) Pentobarbital;

(3) Any suppository dosage form containing any of the following substances or any salt of any of the substances specifically included in this subsection (3) approved by the Food and Drug Administration for marketing only as a suppository:

(i) Amobarbital;
(ii) Secobarbital;
(iii) Pentobarbital;

(4) Chlorhexadol;

(5) Embutramide;

(6) Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers and salts of isomers, for which an application is approved under Section 505 of the Federal Food, Drug and Cosmetic Act;

(7) Ketamine; its salts, isomers, and salts of isomers; other names include (+)-2-(2-chlorophenyl)-2-(methylamino)cyclohexanone;

(8) Lysergic acid;

(9) Lysergic acid amide;

(10) Methyprylon;

(11) Perampanel; its salts, isomers, and salts of isomers;

(12) Sulfondiethylmethane;

(13) Sulfonethylmethane;

(14) Sulfonmethane;

(15) Tiletamine and zolazepam or any salt thereof; other names for the tiletamine and zolazepam combination product include: telazol; other names for tiletamine include: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone; other names for zolazepam include: 4-(2-fluorophenyl)-6,8-dihydro 1,3, 8-trimethylpyrazolo-[3,4-e](1,4)-diazepin-7(1H)-one, flupyrazapon.

(c) Nalorphine.

(d) Any material, compound, mixture or preparation which contains any quantity of ephedrine or pseudoephedrine.

(e) **Narcotic drugs.** Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than one and eight-tenths (1.8) grams of codeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than one and eight-tenths (1.8) grams of codeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than one and eight-tenths (1.8) grams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(4) Not more than three hundred (300) milligrams of ethylmorphine, or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than five hundred (500) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams, or not more than twenty-five (25) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than fifty (50) milligrams of morphine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) **Anabolic steroids.** Unless specifically exempted or listed in another schedule, any material, compound, mixture or preparation containing any quantity of any of the following anabolic steroids (any drug or hormonal substance chemically and pharmacologically related to testosterone other than estrogens, progestins, corticosteroids and dehydroepiandrosterone):

(1) 3beta,17-dihydroxy-5a-androstane;

(2) 3alpha,17beta-dihydroxy-5a-androstane;

(3) 5alpha-androstan-3,17-dione;

(4) 1-androstenediol (3beta,17beta-dihydroxy-5alpha-androst-1-ene);

(5) 1-androstenediol (3alpha,17beta-dihydroxy-5alpha-androst-1-ene);

(6) 4-androstenediol (3beta,17beta-dihydroxy-androst-4-ene);

(7) 5-androstenediol (3beta,17beta-dihydroxy-androst-5-ene);

(8) 1-androstenedione ([5alpha]-androst-1-en-3,17-dione);

(9) 4-androstenedione (androst-4-en-3,17-dione);

(10) 5-androstenedione (androst-5-en-3,17-dione);

(11) Bolasterone (7alpha,17alpha-dimethyl-17beta-hydroxyandrost-4-en-3-one);

(12) Boldenone (17beta-hydroxyandrost-1,4,-diene-3-one);

(13) Boldione (androsta-1,4-diene-3,17-dione);

(14) Calusterone (7beta,17alpha-dimethyl-17beta-hydroxyandrost-4-en-3-one);

(15) Clostebol (4-chloro-17beta-hydroxyandrost-4-en-3-one);

(16) Dehydrochloromethyltestosterone (4-chloro-17beta-hydroxy-17alpha-methylandrost-1,4-dien-3-one);

(17) Desoxymethyltestosterone (17alpha-methyl-5alpha-androst-2-en-17beta-ol, also known as madol);

(18) Delta1-dihydrotestosterone (also known as 1-testosterone) (17beta-hydroxy-5alpha-androst-1-en-3-one);

(19) 4-dihydrotestosterone (17beta-hydroxy-androstan-3-one);

(20) Drostanolone (17beta-hydroxy-2alpha-methyl-5alpha-androstan-3-one);

(21) Ethylestrenol (17alpha-ethyl-17beta-hydroxyestr-4-ene);

(22) Fluoxymesterone (9-fluoro-17alpha-methyl-11beta, 17beta-dihydroxyandrost-4-en-3-one);

(23) Formebolone (2-formyl-17alpha-methyl-11alpha,17beta-dihydroxyandrost-1, 4-dien-3-one);

(24) Furazabol (17alpha-methyl-17beta-hydroxyandrostano[2,3-c]-furazan);

(25) 13beta-ethyl-17alpha-hydroxygon-4-en-3-one;

(26) 4-hydroxytestosterone (4,17beta-dihydroxyandrost-4-en-3-one);

(27) 4-hydroxy-19-nortestosterone (4,17beta-dihydroxy-estr-4-en-3-one);

(28) Mestanolone (17alpha-methyl-17beta-hydroxy-5-androstan-3-one);

(29) Mesterolone (1alpha-methyl-17beta-hydroxy-[5alpha]-androstan-3-one);

(30) Methandienone (17alpha-methyl-17beta-hydroxyandrost-1,4-dien-3-one);

(31) Methandriol (17alpha-methyl-3beta, 17beta-dihydroxyandrost-5-ene);

(32) Methasterone (2[alpha], 17[alpha]-dimethyl-5[alpha]-androstan-17[beta]-ol-3-one;

(33) Methenolone (1-methyl-17beta-hydroxy-5alpha-androst-1-en-3-one);

(34) 17alpha-methyl-3beta, 17beta-dihydroxy-5a-androstane;

(35) 17alpha-methyl-3alpha, 17beta-dihydroxy-5a-androstane;

(36) 17alpha-methyl-3beta, 17beta-dihydroxyandrost-4-ene;

(37) 17alpha-methyl-4-hydroxynandrolone (17alpha-methyl-4-hydroxy-17beta-hydroxyestr-4-en-3-one);

(38) Methyldienolone (17alpha-methyl-17beta-hydroxyestra-4,9(10)-dien-3-one);

(39) Methyltrienolone (17alpha-methyl-17beta-hydroxyestra-4,9-11-trien-3-one);

(40) Methyltestosterone (17alpha-methyl-17beta-hydroxyandrost-4-en-3-one);

(41) Mibolerone (7alpha,17alpha-dimethyl-17beta-hydroxyestr-4-en-3-one);

(42) 17alpha-methyl-Delta1-dihydrotestosterone (17b beta-hydroxy-17alpha-methyl-5alpha-androst-1-en-3-one) (also known as 17-alpha-methyl-1-testosterone);

(43) Nandrolone (17beta-hydroxyestr-4-en-3-one);

(44) 19-nor-4-androstenediol (3beta,17beta-dihydroxyestr-4-ene);

(45) 19-nor-4-androstenediol (3a,17beta-dihydroxyestr-4-ene);

(46) 19-nor-5-androstenediol (3beta,17beta-dihydroxyestr-5-ene);

(47) 19-nor-5-androstenediol (3alpha,17beta-dihydroxyestr-5-ene);

(48) 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene3,17-dione, 19-norandrosta-4,9(10)-diene-3,17-dione);

(49) 19-nor-4-androstenedione (estr-4-en-3,17-dione);

(50) 19-nor-5-androstenedione (estr-5-en-3,17-dione);

(51) Norbolethone (13beta,17alpha-diethyl-17beta-hydroxygon-4-en-3-one);

(52) Norclostebol (4-chloro-17beta-hydroxyestr-4-en-3-one);

(53) Norethandrolone (17alpha-ethyl-17beta-hydroxyestr-4-en-3-one);

(54) Normethandrolone (17alpha-methyl-17beta-hydroxyestr-4-en-3-one);

(55) Oxandrolone (17alpha-methyl-17beta-hydroxy-2-oxa-[5alpha]-androstan-3-one);

(56) Oxymesterone (17alpha-methyl-4,17beta-dihydroxyandrost-4-en-3-one);

(57) Oxymetholone (17alpha-methyl-2-hydroxymethylene-17beta-hydroxy-[5alpha]-androstan-3-one);

(58) Prostanozol (17[beta]-hydroxy-5[alpha]-androstano[3,2-c]pyrazole)

(59) Stanozolol (17alpha-methyl-17beta-hydroxy-[5alpha]-androst-2-eno[3,2-c]-pyrazole);

(60) Stenbolone (17beta-hydroxy-2-methyl-[5alpha]-androst-1-en-3-one);

(61) Testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);

(62) Testosterone (17beta-hydroxyandrost-4-en-3-one);

(63) Tetrahydrogestrinone (13beta,17alpha-diethyl-17beta-hydroxygon-4,9,11-trien-3-one);

(64) Trenbolone (17beta-hydroxyestr-4,9,11-trien-3-one);

(65) Any salt, ester, or ether of a drug or substance described in this paragraph. Except such term does not include an anabolic steroid that is expressly intended for administration through implants to cattle or other nonhuman species and that has been approved by the Secretary of Health and Human Services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use, the person shall be considered to have prescribed, dispensed or distributed an anabolic steroid within the meaning of this paragraph.

(g) Any material, compound, mixture or preparation which contains any quantity of buprenorphine or its salts.

(h) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug Administration approved drug product.

(B) Any material, compound, mixture or preparation which contains any quantity of a Schedule III controlled substance other than butalbital, and is listed as an exempt substance in 21 CFR, Section 1308.22, 1308.24, 1308.26, 1308.32 or 1308.34, shall be exempted from the provisions of the Uniform Controlled Substances Law.

HISTORY:

Codes, 1942, § 6831-59; Laws, 1971, ch. 521, § 9; Laws, 1975, ch. 465, § 3; Laws, 1977, ch. 391, § 3; Laws, 1978, ch. 404, § 3; Laws, 1982, ch. 402, § 3; Laws, 1983, ch. 404, § 3; Laws, 1988, ch. 319, § 3; Laws, 1989, ch. 568, § 3; Laws, 1995, ch. 443, § 3; Laws, 2000, ch. 427, § 2; Laws, 2001, ch. 491, § 2; Laws, 2006, ch. 416, § 1; Laws, 2008, ch. 491, § 3; Laws, 2010, ch. 303, § 1; Laws, 2011, ch. 449, § 2; Laws, 2013, ch. 378, § 1; Laws, 2016, ch. 392, § 3; Laws, 2017, ch. 394, § 3, eff from and after July 1, 2017.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section, as amended by Laws of 2000, ch. 427, § 2. The amendment, in (A), had inserted a new paragraph (d), redesignated former (d) as (e), and added a new (g); however, ch. 427 did not redesignate (e) and (f). Former (e) and (f) have been redesignated as (f) and (g), and newly added (g) has been redesignated as (h). The Committee ratified the correction at its September 18, 2000, meeting.

Editor's Notes —

Laws of 2010, ch. 303, § 5, provides:

"SECTION 5. This act does not apply to wholesale drug distributors licensed and regulated by the Mississippi Board of Pharmacy and registered with and regulated by the United States Drug Enforcement Administration and exempts them from storage, reporting, record keeping or physical security control requirements for controlled substances containing any material, compound, mixture or preparation which contains any quantity of ephedrine or pseudoephedrine."

Chapter 378, Laws of 2013, which amended this section, is known as "Karen's Law."

Amendment Notes —

The 2017 amendment, in (A), deleted former (h), which read: "Any material, compound, mixture or preparation which contains any quantity of pentazocine or its salts in oral dosage form," and redesignated former (i) as (h).

Cross References —

Board's power to add to, delete or reschedule substances listed in schedules of controlled substances, see § 41-29-111.

Registration of manufacturers and distributors, see § 41-29-127.

Requirement of prescriptions, see § 41-29-137.

Prohibited acts and penalties for violations thereof with respect to controlled substances scheduled in this section, see § 41-29-139.

Heavier penalty to adult violating controlled substance prohibitions with respect to providing substance to a minor, see § 41-29-145.

Automatic control and listing of substances controlled under prior law but omitted from present schedules, see § 41-29-173(c).

Federal Aspects—

Section 505 of the Federal Food, Drug and Cosmetic Act appears as 21 USCS § 355.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Indictment.

1. In general.

Trial court erred by granting a residential drug and alcohol treatment facility summary judgment based on the wrongful conduct rule in a medical malpractice action, even though the deceased patient violated the law by possessing a controlled substance without a prescription, where the facility had a duty to safeguard him from controlled substances, the facility had a duty to use reasonable care to assess, monitor, and treat the patient after his first urine sample indicated the presence of the controlled substance, and the facility's owner kept the controlled substance in his unlocked desk drawer for several years and kept no inventories or records of dispensing the controlled substance in violation of state and federal laws, and it was foreseeable that the patient, who had sought treatment for abusing prescription drugs, would attempt to secure prescription drugs. Cahn v. COPAC, Inc., 198 So. 3d 347, 2015 Miss. App. LEXIS 644 (Miss. Ct. App. 2015), cert. denied, 202 So. 3d 613, 2016 Miss. LEXIS 361 (Miss. 2016), cert. denied, — So. 3d —, 2016 Miss. LEXIS 365 (Miss. 2016).

In a prosecution for possession with intent to deliver a controlled substance, in violation of §§ 41-29-115, 41-29-117, and 41-29-119, the record failed affirmatively to establish denial of defendants' right to effective assistance of counsel; nevertheless, affirmance of the judgment of conviction would not preclude defendants from litigating the issue via proper postconviction proceedings. Read v. State, 430 So. 2d 832, 1983 Miss. LEXIS 2525 (Miss. 1983).

2. Indictment.

Record reflected that defendant was convicted and sentenced for possession of a Schedule III substance, not a Schedule II substance, the State made no objection or attempt to classify the drug as a Schedule II substance, and defendant was not given the maximum sentence, such that he suffered no prejudice from the failure to identify in the indictment whether he was being charged with the sale of a Schedule II or Schedule III drug. Riley v. State, 126 So. 3d 1007, 2013 Miss. App. LEXIS 832 (Miss. Ct. App. 2013).

RESEARCH REFERENCES

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 10, 32 et seq.

29 Am. Jur. Proof of Facts 2d 199, Barbiturate Poisoning.

29 Am. Jur. Proof of Facts 2d 223, Unintentional Barbiturate Overdose.

CJS.

72 C.J.S., Poisons §§ 2-4.

§ 41-29-119. Schedule IV of controlled substances.

(A) The controlled substances listed in this section are included in Schedule IV.

SCHEDULE IV

(a) **Narcotic drugs.** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains limited quantities of the following narcotic drugs, or any salts thereof:

(1) Not more than one (1) milligram of difenoxin and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit;

(2) Dextropropoxyphene, including its salts (Darvon, Darvon-N; also found in Darvon compound and Darvocet-N, etc.);

(3) 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol, its salts, optical and geometric isomers and salts of these isomers (including tramadol).

(b) **Depressants.** Any material, compound, mixture or preparation which contains any quantity of the following substances:

(1) Alfaxalone;
(2) Alprazolam;
(3) Barbital;
(4) Bromazepam;
(5) Camazepam;
(6) Carisoprodol;
(7) Chloral betaine;
(8) Chloral hydrate;

(9) Chlordiazepoxide and its salts, but does not include chlordiazepoxide hydrochloride and clidinium bromide or chlordiazepoxide and esterified estrogens;
(10) Clobazam;
(11) Clonazepam;
(12) Clorazepate;
(13) Clotiazepam;
(14) Cloxazolam;
(15) Delorazepam;
(16) Diazepam;
(17) Dichloralphenazone;
(18) Estazolam;
(19) Ethchlorvynol;
(20) Ethinamate;
(21) Ethyl loflazepate;
(22) Fludiazepam;
(23) Flunitrazepam;
(24) Flurazepam;
(25) Fospropofol;
(26) Halazepam;
(27) Haloxazolam;
(28) Ketazolam;
(29) Loprazolam;
(30) Lorazepam;
(31) Lormetazepam;
(32) Mebutamate;
(33) Medazepam;
(34) Meprobamate;
(35) Methohexital;
(36) Methylphenobarbital;
(37) Midazolam;
(38) Nimetazepam;
(39) Nitrazepam;
(40) Nordiazepam;
(41) Oxazepam;
(42) Oxazolam;
(43) Paraldehyde;
(44) Petrichloral;
(45) Phenobarbital;
(46) Pinazepam;
(47) Prazepam;
(48) Quazepam;
(49) Suvorexant;
(50) Temazepam;
(51) Tetrazepam;
(52) Triazolam;

(53) Zaleplon;

(54) Zolpidem;

(55) Zopiclone.

(c) Fenfluramine.

(d) **Lorcaserin.** Any material, compound, mixture, or preparation which contains any quantity of Lorcaserin, including its salts, isomers, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible.

(e) **Stimulants.** Any material, compound, mixture or preparation which contains any quantity of the following substances:

(1) Cathine ((+/-) Norpseudoephedrine);

(2) Diethylpropion;

(3) Fencamfamin;

(4) Fenproporex;

(5) Mazindol;

(6) Mefenorex;

(7) Modafinil;

(8) Pemoline (including any organometallic complexes and chelates thereof);

(9) Phentermine;

(10) Pipradrol;

(11) Sibutramine;

(12) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(f) **Other substances.**

(1) Pentazocine;

(2) Butorphanol (including its optical isomers);

(3) Eluxadoline (5-[[[(2*S*)-2-amino-3-[4-aminocarbonyl)-2,6-dimethylphenyl]-1-oxopropyl] [(1*S*)-1-(4-phenyl-1*H*-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid); (including its optical isomers) and its salts, isomers, and salts of isomers.

(B) Any material, compound, mixture or preparation which contains any quantity of a Schedule IV controlled substance and is listed as an exempt substance in 21 CFR, Section 1308.22, 1308.24, 1308.26, 1308.32 or 1308.34, shall be exempted from the provisions of the Uniform Controlled Substances Law.

HISTORY:

Codes, 1942, § 6831-60; Laws, 1971, ch. 521, § 10; Laws, 1975, ch. 465, § 4; Laws, 1977, ch. 391, § 4; Laws, 1978 ch. 404, § 4; Laws, 1979, ch. 368, § 3; Laws, 1981, ch. 502, § 4; Laws, 1982, ch. 402, § 5; Laws, 1983, ch. 404, § 4; Laws, 1986, ch. 512, § 2; Laws, 1987, ch. 475, § 3; Laws, 1989, ch. 568, § 4; Laws, 1995, ch. 443, § 4; Laws, 1998, ch. 328, § 1; Laws, 2000, ch. 427, § 3; Laws, 2001, ch. 491, § 3; Laws, 2006, ch. 416, § 2; Laws, 2008, ch. 491, § 4; Laws, 2011, ch. 449, § 3; Laws, 2014, ch. 501, § 2; Laws, 2016, ch. 392, § 4; Laws, 2017, ch. 394, § 4, eff from and after July 1, 2017.

Editor's Notes —

Laws of 2014, ch. 501, § 6 provides:

"SECTION 6. Sections 1 and 3 of this act shall take effect and be in force from and after its passage, and the remainder of this act shall take effect and be in force from and after July 1, 2014."

Amendment Notes —

The 2017 amendment, in (A)(a), added (3), and made a related stylistic change; and in (A)(f), rewrote (1), which read: "Butorphanol (including its optical isomers)," rewrote (2), which read: "Tramadol," and added (3).

Cross References —

Board's power to add to, delete or reschedule substances listed in schedules of controlled substances, see § 41-29-111.

Registration of manufacturers and distributors, see § 41-29-127.

Requirement of prescriptions, see § 41-29-137.

Prohibited acts and penalties for violations thereof with respect to controlled substances scheduled in this section, see § 41-29-139.

Heavier penalty to adult violating controlled substance prohibitions with respect to providing substance to a minor, see § 41-29-145.

Automatic control and listing of substances controlled under prior law but omitted from present schedules, see § 41-29-173(c).

JUDICIAL DECISIONS

1. In general.

In a prosecution for possession with intent to deliver a controlled substance, in violation of §§ 41-29-115, 41-29-117, and 41-29-119, the record failed affirmatively to establish denial of defendants' right to effective assistance of counsel; nevertheless, affirmance of the judgment of conviction would not preclude defendants from litigating the issue via proper postconviction proceedings. Read v. State, 430 So. 2d 832, 1983 Miss. LEXIS 2525 (Miss. 1983).

RESEARCH REFERENCES

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 10, 32 et seq.

CJS.

72 C.J.S., Poisons §§ 2-4.

§ 41-29-121. Schedule V of controlled substances.

(A) The controlled substances listed in this section are included in Schedule V:

SCHEDULE V

(a) **Narcotic drugs containing nonnarcotic active medicinal ingredients.** Any compound, mixture or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation, valuable, medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than two hundred (200) milligrams of codeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams;

(2) Not more than one hundred (100) milligrams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams;

(3) Not more than one hundred (100) milligrams of ethylmorphine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams;

(4) Not more than two and five-tenths (2.5) milligrams of diphenoxylate and not less than twenty-five (25) micrograms of atropine sulphate per dosage unit;

(5) Not more than one hundred (100) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams;

(6) Not more than five-tenths (0.5) milligram of difenoxin and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit.

(b) **Stimulants.** Unless specifically excepted or listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substance, including its salts, isomers and salts of isomers: Pyrovalerone.

(c) **Depressants.** Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers and salts of isomers:

(1) Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl] butanamide) (also referred to as BRV; UCB-34714; Briviact);

(2) Ezogabine [N-[2-amino-4-(4- fluorobenzylamino)-phenyl]-carbamic acid ethyl ester];

(3) Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide];

(4) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].

(B) Any material, compound, mixture or preparation which contains any quantity of a Schedule V controlled substance and is listed as an exempt substance in 21 CFR, Section 1308.22, 1308.24, 1308.26, 1308.32 or 1308.34, shall be exempted from the provisions of the Uniform Controlled Substances Law.

HISTORY:

Codes, 1942, § 6831-61; Laws, 1971, ch. 521, § 11; Laws, 1978, ch. 404, § 5; Laws, 1979, ch. 368, § 4; Laws, 1983, ch. 404, § 5; Laws, 1986, ch. 512, § 3; Laws, 1989, ch. 568, § 5; 1995, ch. 443, § 5; Laws, 2006, ch. 416, § 3; Laws, 2008, ch. 491, § 5; Laws, 2011, ch. 449, § 4; Laws, 2013, ch. 378, § 2; Laws, 2017, ch. 394, § 5, eff from and after July 1, 2017.

Amendment Notes —

The 2017 amendment, in (A)(c), added (1). and redesignated former (1) through (3) as (2) through (4).

Cross References —

Board's power to add to, delete or reschedule substances listed in schedules of controlled substances, see § 41-29-111.

Exemption from registration for ultimate user or person in lawful possession of Schedule V substance as defined in this section, see § 41-29-125.

Registration of manufacturers and distributors, see § 41-29-127.

Requirement of prescriptions, see § 41-29-137.

Prohibited acts and penalties for violations thereof with respect to controlled substances scheduled in this section, see § 41-29-139.

Heavier penalty to adult violating controlled substance prohibitions with respect to providing substance to a minor, see § 41-29-145.

Automatic control and listing of substances controlled under prior law but omitted from present schedules, see § 41-29-173(c).

RESEARCH REFERENCES

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 10, 32 et seq.

CJS.

72 C.J.S., Poisons §§ 2-4.

§ 41-29-122. Exempt chemical preparations and mixtures.

Any material, compound, mixture or preparation which contains any quantity of a controlled substance and is listed as an exempt substance in 21

C.F.R., Section 1308.22, shall be exempted from the provisions of the Uniform Controlled Substances Law.

HISTORY:
Laws, 1977, ch. 391, § 5; Laws, 1978, ch. 404, § 6; Laws, 1983, ch. 404, § 6, eff from and after July 1, 1983.

§ 41-29-123. Revision and republication of schedules.

The board shall revise and republish the schedules set out in Sections 41-29-113 through 41-29-121 at least once every twelve months.

HISTORY:
Codes, 1942, § 6831-62; Laws, 1971, ch. 521, § 12, eff from and after passage (approved April 16, 1971).

Cross References —
Board's power to add to, delete, or reschedule substances enumerated in listed schedules, see § 41-29-111.

JUDICIAL DECISIONS

1. In general.
Under the Uniform Controlled Substances Law, the penalties prescribed for violations thereof are inextricably tied to the various schedules, and therefore § 41-29-111, to the extent the state board of health is given the authority to move a substance from one schedule to another, to add substances to any schedule, and to delete substances from any schedule, is an unconstitutional attempt to delegate the authority to define crimes and fix the punishment therefor, which authority is vested exclusively in the legislature; such unconstitutional portions are severable from the remaining provisions of the Law. Howell v. State, 300 So. 2d 774, 1974 Miss. LEXIS 1632, 1974 Miss. LEXIS 1633 (Miss. 1974).

RESEARCH REFERENCES

Am. Jur.
25 Am. Jur. 2d, Drugs and Controlled Substances §§ 10, 32 et seq.

§ 41-29-125. Rules and regulations relative to registration and control of manufacture, distribution and dispensing of controlled substances; delivery of Schedule II controlled substance by mail or other shipment to be made only to persons eighteen or older.

(1) The State Board of Pharmacy may promulgate rules and regulations relating to the registration and control of the manufacture, distribution and dispensing of controlled substances within this state and the distribution and dispensing of controlled substances into this state from an out-of-state location.

(a) Every person who manufactures, distributes or dispenses any controlled substance within this state or who distributes or dispenses any controlled substance into this state from an out-of-state location, or who proposes to engage in the manufacture, distribution or dispensing of any controlled substance within this state or the distribution or dispensing of any controlled substance into this state from an out-of-state location, must obtain a registration issued by the State Board of Pharmacy, the State Board of Medical Licensure, the State Board of Dental Examiners, the Mississippi

Board of Nursing or the Mississippi Board of Veterinary Medicine, as appropriate, in accordance with its rules and the law of this state. Such registration shall be obtained annually or biennially, as specified by the issuing board, and a reasonable fee may be charged by the issuing board for such registration.

(b) Persons registered by the State Board of Pharmacy, with the consent of the United States Drug Enforcement Administration and the State Board of Medical Licensure, the State Board of Dental Examiners, the Mississippi Board of Nursing or the Mississippi Board of Veterinary Medicine to manufacture, distribute, dispense or conduct research with controlled substances may possess, manufacture, distribute, dispense or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this article.

(c) The following persons need not register and may lawfully possess controlled substances under this article:

(1) An agent or employee of any registered manufacturer, distributor or dispenser of any controlled substance if he is acting in the usual course of his business or employment;

(2) A common or contract carrier or warehouse, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;

(3) An ultimate user or a person in possession of any controlled substance pursuant to a valid prescription or in lawful possession of a Schedule V substance as defined in Section 41-29-121.

(d) The State Board of Pharmacy may waive by rule the requirement for registration of certain manufacturers, distributors or dispensers if it finds it consistent with the public health and safety.

(e) A separate registration is required at each principal place of business or professional practice where an applicant within the state manufactures, distributes or dispenses controlled substances and for each principal place of business or professional practice located out-of-state from which controlled substances are distributed or dispensed into the state.

(f) The State Board of Pharmacy, the Mississippi Bureau of Narcotics, the State Board of Medical Licensure, the State Board of Dental Examiners, the Mississippi Board of Nursing and the Mississippi Board of Veterinary Medicine may inspect the establishment of a registrant or applicant for registration in accordance with the regulations of these agencies as approved by the board.

(2) Whenever a pharmacy ships, mails or delivers any Schedule II controlled substance listed in Section 41-29-115 to a private residence in this state, the pharmacy shall arrange with the entity that will actually deliver the controlled substance to a recipient in this state that the entity will: (a) deliver the controlled substance only to a person who is eighteen (18) years of age or older; and (b) obtain the signature of that person before delivering the controlled substance. The requirements of this subsection shall not apply to a pharmacy serving a nursing facility or to a pharmacy owned and/or operated

by a hospital, nursing facility or clinic to which the general public does not have access to purchase pharmaceuticals on a retail basis.

HISTORY:

Codes, 1942, § 6831-63; Laws, 1971, ch. 521, § 13; Laws, 1983, ch. 488, § 36, ch. 522, § 14; Laws, 1984, ch. 354, § 2; Laws, 2001, ch. 470, § 2; Laws, 2009, ch. 469, § 4; Laws, 2011, ch. 466, § 1; Laws, 2011, ch. 546, § 34, eff from and after passage (approved Apr. 26, 2011).

Joint Legislative Committee Note —

Section 1 of ch. 466, Laws of 2011, effective from and after July 1, 2011 (approved March 30, 2011), amended this section. Section 34 of ch. 546, Laws of 2011, effective from and after passage (approved April 26, 2011), also amended this section. As set out above, this section reflects the language of Section 34 of ch. 546, Laws of 2011, which contains language that specifically provides that it supersedes § 41-29-125 as amended by Laws of 2011, ch. 466.

Cross References —

"Mississippi Bureau of Drug Enforcement" meaning the bureau of narcotics, see § 41-29-105(d).

Bureau of narcotics, see §§ 41-29-107 et seq.

Continuation of regulations promulgated under prior laws, see § 41-29-175.

State board of dental examiners, see § 73-9-7.

State board of veterinary medicine, see § 73-39-55.

State board of medical licensure, see §§ 73-43-1 et seq.

RESEARCH REFERENCES

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 21- 26, 53, 58, 103.

CJS.

28 C.J.S., Drugs and Narcotics §§ 187, 211-213, 227 et seq.

§ 41-29-127. Registration; factors considered.

(a) The state board of pharmacy shall register an applicant to manufacture or distribute controlled substances included in Sections 41-29-113 through 41-29-121 unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the state board of pharmacy shall consider the following factors:

(1) Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

(2) Compliance with applicable state and local law;

(3) Any convictions of the applicant under any federal and state laws relating to any controlled substance;

(4) Past experience in the manufacture or distribution of controlled substances and the existence in the applicant's establishment of effective controls against diversion;

(5) Furnishing by the applicant of false or fraudulent material in any application filed under this article;

(6) Suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law; and

(7) Any other factors relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) does not entitle a registrant to manufacture and distribute controlled substances in Schedule I or II, as set out in Sections 41-29-113 and 41-29-115, other than those specified in the registration.

(c) Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V, as set out in Sections 41-29-115 through 41-29-121, if they are authorized to dispense or conduct research under the law of this state. The state board of pharmacy need not require separate registration under this section for practitioners engaging in research with nonnarcotic controlled substances in the said Schedules II through V where the registrant is already registered therein in another capacity. Practitioners registered under federal law to conduct research with Schedule I substances, as set out in Section 41-29-113, may conduct research with Schedule I substances within this state upon furnishing the state board of health evidence of that federal registration.

(d) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this article.

HISTORY:

Codes, 1942, § 6831-64; Laws, 1971, ch. 521, § 14, eff from and after passage (approved April 16, 1971).

Cross References —

Exemptions from registration, see § 41-29-125.

Licensing of physicians and other practitioners in administering, etc., narcotics, see §§ 41-29-301 et seq.

RESEARCH REFERENCES

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 58 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Drugs, Narcotics, and Poisons, Form 21 (complaint, petition, or declaration – to restrain interference with production and distribution of medicine).

9 Am. Jur. Pl & Pr Forms (Rev), Drugs, Narcotics, and Poisons, Forms 3-8 (licensing and regulation).

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 23 et seq. (judicial review of denial of license).

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 32 (order-directing jury trial – on petition for review of administrative denial of license).

CJS.

28 C.J.S., Drugs and Narcotics §§ 227 et seq.

72 C.J.S., Poisons §§ 2-4.

§ 41-29-129. Revocation and suspension of registration.

(a) A registration to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the State Board of Pharmacy upon a finding that the registrant:

(1) Has willfully furnished false or fraudulent material information in any application filed under this article;

(2) Has been convicted of a felony within the past five (5) years and has not been pardoned and his citizenship restored under any state or federal law relating to any controlled substance;

(3) Has had his federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances;

(4) Has violated or failed to comply with any state law or any duly promulgated regulation of the State Board of Pharmacy which reflects adversely on the registrant's reliability and integrity with respect to controlled substances;

(5) Has violated the Uniform Controlled Substances Law of the State of Mississippi;

(6) Has violated any duly promulgated rule or regulation of the State Board of Pharmacy pertaining to the manufacture, distribution, storage, possession, control or dispensing of controlled substances;

(7) Has been convicted of a violation relating to any substance defined in this article as a controlled substance;

(8) Has dispensed any controlled substance if the registrant knew the prescription was not valid under the provisions of this article.

(b) The State Board of Pharmacy may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) If the board or the State Board of Pharmacy suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state. All state professional or business licensing agencies shall promptly notify the bureau of all orders of suspensions or revocations which are the result of drug violations or drug-related matters.

(d) The bureau shall promptly notify the federal Drug Enforcement Administration of all orders suspending or revoking registration and all forfeitures of controlled substances.

HISTORY:

Codes, 1942, § 6831-65; Laws, 1971, ch. 521, § 15; Laws, 1972, ch. 520, § 6; Laws, 1977, ch. 377; Laws, 2009, ch. 469, § 5; Laws, 2011, ch. 466, § 2, eff from and after July 1, 2011.

Cross References —

Necessity of order to show cause before denying, suspending, revoking, or refusing to renew, registration, see § 41-29-131.

Revocation or suspension of licenses of physicians and other practitioners for violation of narcotic drug regulations, see § 41-29-311.

RESEARCH REFERENCES

ALR.

What constitutes conviction under § 304(a)(2) of the Controlled Substances Act (21 USCS § 824(a)(2)) which provides for revocation of registration to manufacture, distribute, or dispense controlled substances upon finding that registrant has been "convicted". 56 A.L.R. Fed. 909.

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 69 et seq.

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits. Forms 43-46, 48 (revocation or suspension).

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 61-63 (reinstatement).

CJS.

28 C.J.S., Drugs and Narcotics §§ 228 et seq.

§ 41-29-131. Denial, suspension, revocation, or refusal to renew license; proceedings.

(1) Upon presentation before the State Board of Pharmacy by any person showing grounds for denying, suspending or revoking a controlled substance registration, or refusing a renewal of registration, the State Board of Pharmacy may, in its discretion, deny such registration, revoke or suspend such registration or refuse a renewal of such registration.

(2) Before denying, suspending or revoking a registration, or refusing a renewal of registration, the State Board of Pharmacy shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked or suspended, or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the State Board of Pharmacy at a time and place not less than twenty (20) days after the date of service of the order, but in the case of a denial or renewal of registration, the show cause order shall be served not later than thirty (30) days before the expiration of the registration. Such order may be served by mailing a copy thereof by United States, first-class, certified mail, postage prepaid, to the last-known residence or business address of such registrant. The hearings on such charges shall be at such time and place as the State Board of Pharmacy may prescribe.

(3) At such hearings, all witnesses shall be sworn by a member of the State Board of Pharmacy, and stenographic notes of the proceedings may be taken and filed as a part of the record in the case. Any party to the proceedings requesting it shall be furnished with a copy of such stenographic notes upon payment to the State Board of Pharmacy of such fees as it shall prescribe, not exceeding, however, the actual cost thereof.

(4) The State Board of Pharmacy is authorized and empowered to issue subpoenas for the attendance of witnesses and the production of books and papers. The process issued by the State Board of Pharmacy shall extend to all parts of the state and such process shall be served by any person designated by the State Board of Pharmacy for such service. The person serving such process shall receive such compensation as may be allowed by the State Board of Pharmacy, not to exceed the fee prescribed by law for similar services. All witnesses who shall be subpoenaed, and who shall appear in any proceedings before the State Board of Pharmacy, shall receive the same fees and mileage as allowed by law and all such fees shall be taxed as part of the costs in the case.

(5) Where in any proceeding before the State Board of Pharmacy any witness shall fail or refuse to attend upon subpoena issued by the board, shall refuse to testify, or shall refuse to produce any books and papers, the production of which is called for by the subpoena, the attendance of such witness and the giving of his testimony and the production of the books and papers shall be enforced by any court of competent jurisdiction of this state in

the manner provided for the enforcement of attendance and testimony of witnesses in civil cases in the courts of this state.

(6) The State Board of Pharmacy shall conduct the hearing in an orderly and continuous manner, granting continuances only when the ends of justice may be served. The State Board of Pharmacy shall, within sixty (60) days after the conclusion of the hearing, reduce its decision to writing and forward an attested true copy thereof to the last-known residence or business address of such applicant, registrant or holder of a registration, by way of United States, first-class, certified mail, postage prepaid.

(7) Such applicant, registrant, holder of a registration or person aggrieved shall have the right of appeal from an adverse ruling or order or decision of the State Board of Pharmacy to the chancery court, upon forwarding notice of appeal to the State Board of Pharmacy thirty (30) days after the decision of the board is mailed in the manner here contemplated. An appeal will not be allowed in the event notice of appeal, together with the appeal bond hereinafter required, shall not have been forwarded for the State Board of Pharmacy within the period of thirty (30) days.

(8) Appeal shall be to the chancery court of the county and judicial district of the residence of the appellant, or to the chancery court of the First Judicial District of Hinds County, at the election of the appellant. The notice of appeal shall elect venue, unless the appellant be a nonresident, in which event the State Board of Pharmacy shall certify all documents and evidence directly to the chancery court of the First Judicial District of Hinds County for further proceedings. The appeal shall thereupon be heard in due course by the court, which shall review the record and make its determination thereon.

(9) The appellant shall, together with the notice of appeal, forward to and post with the State Board of Pharmacy a satisfactory bond in the amount of Two Hundred Dollars ($200.00) for the payment of any costs which may be adjudged against him.

(10) Any order, rule or decision of the State Board of Pharmacy shall not take effect until after the time for appeal shall have expired. In the event of an appeal, the appeal shall act as a supersedeas and the court shall dispose of the appeal and enter its decision promptly. The hearing on the appeal may, in the discretion of the chancellor, be tried in vacation.

(11) These proceedings shall be conducted in accordance with applicable administrative procedures without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration, which shall remain in effect pending the outcome of the administrative hearing.

(12) The Mississippi Bureau of Narcotics or the State Board of Pharmacy may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under Section 41-29-129, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the suspending agency or dissolved by a court of competent jurisdiction.

HISTORY:

Codes, 1942, § 6831-66; Laws, 1971, ch. 521, § 16; Laws, 1977, ch. 393; Laws, 2009, ch. 469, § 6, eff from and after July 1, 2009.

Cross References —

"Mississippi Bureau of Drug Enforcement" meaning the bureau of narcotics, see § 41-29-105(d).

State board of pharmacy, see § 73-21-75.

RESEARCH REFERENCES

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 66, 67 et seq.

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Form 47 (citation-by licensing authority – commanding licensee to appear at proceedings for revocation or suspension of license).

CJS.

28 C.J.S., Drugs and Narcotics §§ 228 et seq.

§ 41-29-133. Records and inventories.

Persons registered to manufacture, distribute or dispense controlled substances under this article shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law and with any additional rules the Mississippi Bureau of Narcotics, the State Board of Pharmacy, the State Board of Medical Licensure, the State Board of Dental Examiners, the Mississippi Board of Nursing, the State Board of Optometry or the Mississippi Board of Veterinary Medicine may issue.

HISTORY:

Codes, 1942, § 6831-67; Laws, 1971, ch. 521, § 17; Laws, 1983, ch. 488, § 37; Laws, 1983, ch. 522, § 15; Laws, 2001, ch. 470, § 3; Laws, 2005, ch. 404, § 7; Laws, 2009, ch. 469, § 7, eff from and after July 1, 2009.

Joint Legislative Committee Note —

In 2009, a typographical error in the fourth line of the section was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by deleting the word "of" preceding "the Mississippi Bureau of Narcotics..." The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

Cross References —

Record by practitioner of controlled substances administered, dispensed or used by him otherwise than by prescription, see § 41-29-137.

State board of dental examiners, see § 73-9-7.

State board of medical licensure, see §§ 73-43-1 et seq.

RESEARCH REFERENCES

ALR.

Application, to drug or narcotic records maintained by druggist or physician, of "required records" exception to privilege against self-incrimination. 96 A.L.R. Fed. 868.

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 64, 65, 86.

CJS.

28 C.J.S., Drugs and Narcotics § 226.

§ 41-29-135. Order forms.

Controlled substances in Schedules I and II of Sections 41-29-113 and

41-29-115, shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section.

HISTORY:

Codes, 1942, § 6831-68; Laws, 1971, ch. 521, § 18, eff from and after passage (approved April 16, 1971).

Cross References —

Penalties for violations as to order forms, see §§ 41-29-141, 41-29-143.

RESEARCH REFERENCES

ALR.

Propriety, under state law, of manufacturer's or supplier's refusal to sell medical product to individual physician, hospital, or clinic. 45 A.L.R.4th 1006.

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 64, 65, 76.

CJS.

28 C.J.S., Drugs and Narcotics Supp § 312.

§ 41-29-136. Harper Grace's Law; legal possession, use, research, cultivation, processing, dispensing, prescribing or administration of cannabidiol; restrictions [Repealed effective July 1, 2021].

(1) "CBD solution" means a pharmaceutical preparation consisting of processed cannabis plant extract in oil or other suitable vehicle.

(2)(a) CBD solution prepared from Cannabis plant extract that is provided by the National Center for Natural Products Research at the University of Mississippi under appropriate federal and state regulatory approvals may be dispensed by the Department of Pharmacy Services at the University of Mississippi Medical Center (UMMC Pharmacy) after mixing the extract with a suitable vehicle. The CBD solution may be prepared by the UMMC Pharmacy or by another pharmacy or laboratory in the state under appropriate federal and state regulatory approvals and registrations. For the purposes of clinical trials under this section, CBD solution must meet the standard of exemption from control under Section 41-29-113.

(b) The patient or the patient's parent, guardian or custodian must execute a hold-harmless agreement that releases from liability the state and any division, agency, institution or employee thereof involved in the research, cultivation, processing, formulating, dispensing, prescribing or administration of CBD solution obtained from entities authorized under this section to produce or possess cannabidiol for research under appropriate federal and state regulatory approvals and registrations.

(c) The National Center for Natural Products Research at the University of Mississippi and the Mississippi Agricultural and Forestry Experiment Station at Mississippi State University are the only entities authorized to produce cannabis plants for cannabidiol research.

(d) Research of CBD solution under this section must comply with the provisions of Section 41-29-125 regarding lawful possession of controlled substances, of Section 41-29-137 regarding record-keeping requirements relative to the dispensing, use or administration of controlled substances, and of Section 41-29-133 regarding inventory requirements, insofar as they are applicable. Authorized entities may enter into public-private partnerships to facilitate research.

(3)(a) In a prosecution for the unlawful possession of marijuana under the laws of this state, it is an affirmative and complete defense to prosecution that:

(i) The defendant suffered from a debilitating epileptic condition or related illness and the use or possession of CBD solution was pursuant to the order of a physician as authorized under this section; or

(ii) The defendant is the parent, guardian or custodian of an individual who suffered from a debilitating epileptic condition or related illness and the use or possession of CBD solution was pursuant to the order of a physician as authorized under this section.

(b) An agency of this state or a political subdivision thereof, including any law enforcement agency, may not initiate proceedings to remove a child from the home based solely upon the possession or use of CBD solution by the child or parent, guardian or custodian of the child as authorized under this section.

(c) An employee of the state or any division, agency, institution thereof involved in the research, cultivation, processing, formulation, dispensing, prescribing or administration of CBD solution shall not be subject to prosecution for unlawful possession, use, distribution or prescription of marijuana under the laws of this state for activities arising from or related to the use of CBD solution in the treatment of individuals diagnosed with a debilitating epileptic condition.

(4) This section shall be known as "Harper Grace's Law."

(5) This section shall stand repealed from and after July 1, 2021.

HISTORY:

Laws, 2014, ch. 501, § 3; Laws, 2017, ch. 370, § 1, eff from and after passage (approved Mar. 20, 2017).

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in subsection designations in the section. Section 1 of Chapter 370, Laws of 2017, rewrote the section and mistakenly omitted a subsection (4). Subsections (5) and (6) have therefore been redesignated (4) and (5), respectively. The Joint Committee ratified the correction at its August 14, 2018, meeting.

Editor's Notes —

Laws of 2014, ch. 501, § 6 provides:

"SECTION 6. Sections 1 and 3 of this act shall take effect and be in force from and after its passage, and the remainder of this act shall take effect and be in force from and after July 1, 2014."

Amendment Notes —

The 2017 amendment, effective March 20, 2017, rewrote the section to clarify the use of cannabidiol in research for treatments for a debilitating epileptic condition or related illness under appropriate federal and state regulatory approvals and registrations, and to extend the date of the repealer for the section by substituting "July 1, 2021" for "July 1, 2017."

§ 41-29-137. Prescriptions.

(a)(1) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in Schedule II, as set out in Section 41-29-115, may be dispensed without the written valid prescription of a practitioner. A practitioner shall keep a record of all controlled substances in Schedule I, II and III administered, dispensed or professionally used by him otherwise than by prescription.

(2) In emergency situations, as defined by rule of the State Board of Pharmacy, Schedule II drugs may be dispensed upon the oral valid prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of Section 41-29-133. No prescription for a Schedule II substance may be refilled unless renewed by prescription issued by a licensed medical doctor.

(b) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III or IV, as set out in Sections 41-29-117 and 41-29-119, shall not be dispensed without a written or oral valid prescription of a practitioner. The prescription shall not be filled or refilled more than six (6) months after the date thereof or be refilled more than five (5) times, unless renewed by the practitioner.

(c) A controlled substance included in Schedule V, as set out in Section 41-29-121, shall not be distributed or dispensed other than for a medical purpose.

(d) An optometrist certified to prescribe and use therapeutic pharmaceutical agents under Sections 73-19-153 through 73-19-165 shall be authorized to prescribe oral analgesic controlled substances in Schedule IV or V, as pertains to treatment and management of eye disease by written prescription only.

(e) Administration by injection of any pharmaceutical product authorized in this section is expressly prohibited except when dispensed directly by a practitioner other than a pharmacy.

(f)(1) For the purposes of this article, Title 73, Chapter 21, and Title 73, Chapter 25, Mississippi Code of 1972, as it pertains to prescriptions for controlled substances, a "valid prescription" means a prescription that is issued for a legitimate medical purpose in the usual course of professional practice by:

(A) A practitioner who has conducted at least one (1) in-person medical evaluation of the patient; or

(B) A covering practitioner.

(2)(A) "In-person medical evaluation" means a medical evaluation that is conducted with the patient in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health professionals.

(B) "Covering practitioner" means a practitioner who conducts a medical evaluation other than an in-person medical evaluation at the request of a practitioner who has conducted at least one (1) in-person medical evaluation of the patient or an evaluation of the patient through the practice of telemedicine within the previous twenty-four (24) months and who is temporarily unavailable to conduct the evaluation of the patient.

(3) A prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire is not a valid prescription.

(4) Nothing in this subsection (b) shall apply to:

(A) A prescription issued by a practitioner engaged in the practice of telemedicine as authorized under state or federal law; or

(B) The dispensing or selling of a controlled substance pursuant to practices as determined by the United States Attorney General by regulation.

HISTORY:

Codes, 1942, § 6831-69; Laws, 1971, ch. 521, § 19; Laws, 2005, ch. 404, § 5; Laws, 2009, ch. 469, § 8; Laws, 2011, ch. 449, § 5, eff from and after July 1, 2011.

Joint Legislative Committee Note —

A typographical error in subsection (b) of this section has been corrected by inserting the word "the" preceding "Federal Controlled Substances Act..." The Joint Legislative Committee on Compilation, Revision and Publication of Legislation ratified this correction at its July 22, 2010, meeting.

Cross References —

Practitioner defined, see § 41-29-105.

Penalties for violations of prescription requirement, see § 41-29-139.

Who may prescribe, administer, dispense or prepare narcotic drugs, see § 41-29-305.

Dispensation of drugs to state executioner, see § 99-19-53.

Federal Aspects—

The federal Controlled Substances Act, referred to in (b), is codified at 21 USCS §§ 801 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Sufficiency of evidence.

1. In general.

The state was not required to prove the absence of a prescription in a prosecution for possession of a controlled substance, as the defendant had the burden of establishing any exemption or exception. Smith v. State, 527 So. 2d 660, 1988 Miss. LEXIS 295 (Miss. 1988).

2. Sufficiency of evidence.

Agents testified that they searched the confidential informant (CI) and her car before and after the sale and that they monitored all of her activity through the audio transmitter. One agent identified defendant's voice as that which he heard over the audio transmitter, and the CI testified as an eyewitness to the cocaine sale and identified defendant as the person from whom she had bought cocaine. While the videotape was not of superior quality, the evidence was sufficient to sustain defendant's conviction. Fuller v. State, 910 So. 2d 674, 2005 Miss. App. LEXIS 174 (Miss. Ct. App. 2005).

RESEARCH REFERENCES

ALR.

Physician's liability to third person for prescribing drug to known drug addict. 42 A.L.R.4th 586.

State law criminal liability of licensed physician for prescribing or dispensing drug or similar controlled substance. 13 A.L.R.5th 1.

Federal criminal liability of licensed physician for unlawfully prescribing or dispensing "controlled substance" or drug in violation of the Controlled Substances Act (21 USCS §§ 801 et seq). 33 A.L.R. Fed. 220.

Application, to drug or narcotic records maintained by druggist or physician, of "required records" exception to privilege against self-incrimination. 96 A.L.R. Fed. 868.

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances § 77.

4 Am. Jur. Proof of Facts 549, Drugs, Proof No. 1 (use of drug other than that called for in prescription).

34 Am. Jur. Proof of Facts 2d 199, Druggist's Liability for Improperly Filling Prescription.

38 Am. Jur. Proof of Facts 2d 589, Physician's Liability for Causing Patient's Drug Addiction.

7 Am. Jur. Proof of Facts 3d 1, Injuries from Drugs.

CJS.

28 C.J.S., Drugs and Narcotics § 225.

§ 41-29-138. Applicability of avoirdupois system of weights.

The avoirdupois system of weights shall be the system by which the weights of controlled substances are determined under this article.

HISTORY:
Laws, 1986, ch. 325, eff from and after passage (approved March 14, 1986).

RESEARCH REFERENCES

Am. Jur.
25 Am. Jur. 2d, Drugs and Controlled Substances §§ 197 et seq.

CJS.
28 C.J.S., Drugs and Narcotics Supp §§ 263 et seq.

§ 41-29-139. Prohibited acts; penalties.

(a) **Transfer and possession with intent to transfer.** Except as authorized by this article, it is unlawful for any person knowingly or intentionally:

(1) To sell, barter, transfer, manufacture, distribute, dispense or possess with intent to sell, barter, transfer, manufacture, distribute or dispense, a controlled substance; or

(2) To create, sell, barter, transfer, distribute, dispense or possess with intent to create, sell, barter, transfer, distribute or dispense, a counterfeit substance.

(b) **Punishment for transfer and possession with intent to transfer.** Except as otherwise provided in Section 41-29-142, any person who violates subsection (a) of this section shall be, if convicted, sentenced as follows:

(1) For controlled substances classified in Schedule I or II, as set out in Sections 41-29-113 and 41-29-115, other than marijuana or synthetic cannabinoids:

(A) If less than two (2) grams or ten (10) dosage units, by imprisonment for not more than eight (8) years or a fine of not more than Fifty Thousand Dollars ($50,000.00), or both.

(B) If two (2) or more grams or ten (10) or more dosage units, but less than ten (10) grams or twenty (20) dosage units, by imprisonment for not less than three (3) years nor more than twenty (20) years or a fine of not more than Two Hundred Fifty Thousand Dollars ($250,000.00), or both.

(C) If ten (10) or more grams or twenty (20) or more dosage units, but less than thirty (30) grams or forty (40) dosage units, by imprisonment for not less than five (5) years nor more than thirty (30) years or a fine of not more than Five Hundred Thousand Dollars ($500,000.00), or both.

(2)(A) For marijuana:

1. If thirty (30) grams or less, by imprisonment for not more than

three (3) years or a fine of not more than Three Thousand Dollars ($3,000.00), or both;

2. If more than thirty (30) grams but less than two hundred fifty (250) grams, by imprisonment for not more than five (5) years or a fine of not more than Five Thousand Dollars ($5,000.00), or both;

3. If two hundred fifty (250) or more grams but less than five hundred (500) grams, by imprisonment for not less than three (3) years nor more than ten (10) years or a fine of not more than Fifteen Thousand Dollars ($15,000.00), or both;

4. If five hundred (500) or more grams but less than one (1) kilogram, by imprisonment for not less than five (5) years nor more than twenty (20) years or a fine of not more than Twenty Thousand Dollars ($20,000.00), or both.

(B) For synthetic cannabinoids:

1. If ten (10) grams or less, by imprisonment for not more than three (3) years or a fine of not more than Three Thousand Dollars ($3,000.00), or both;

2. If more than ten (10) grams but less than twenty (20) grams, by imprisonment for not more than five (5) years or a fine of not more than Five Thousand Dollars ($5,000.00), or both;

3. If twenty (20) or more grams but less than forty (40) grams, by imprisonment for not less than three (3) years nor more than ten (10) years or a fine of not more than Fifteen Thousand Dollars ($15,000.00), or both;

4. If forty (40) or more grams but less than two hundred (200) grams, by imprisonment for not less than five (5) years nor more than twenty (20) years or a fine of not more than Twenty Thousand Dollars ($20,000.00), or both.

(3) For controlled substances classified in Schedules III and IV, as set out in Sections 41-29-117 and 41-29-119:

(A) If less than two (2) grams or ten (10) dosage units, by imprisonment for not more than five (5) years or a fine of not more than Five Thousand Dollars ($5,000.00), or both;

(B) If two (2) or more grams or ten (10) or more dosage units, but less than ten (10) grams or twenty (20) dosage units, by imprisonment for not more than eight (8) years or a fine of not more than Fifty Thousand Dollars ($50,000.00), or both;

(C) If ten (10) or more grams or twenty (20) or more dosage units, but less than thirty (30) grams or forty (40) dosage units, by imprisonment for not more than fifteen (15) years or a fine of not more than One Hundred Thousand Dollars ($100,000.00), or both;

(D) If thirty (30) or more grams or forty (40) or more dosage units, but less than five hundred (500) grams or two thousand five hundred (2,500) dosage units, by imprisonment for not more than twenty (20) years or a fine of not more than Two Hundred Fifty Thousand Dollars ($250,000.00), or both.

(4) For controlled substances classified in Schedule V, as set out in Section 41-29-121:

(A) If less than two (2) grams or ten (10) dosage units, by imprisonment for not more than one (1) year or a fine of not more than Five Thousand Dollars ($5,000.00), or both;

(B) If two (2) or more grams or ten (10) or more dosage units, but less than ten (10) grams or twenty (20) dosage units, by imprisonment for not more than five (5) years or a fine of not more than Ten Thousand Dollars ($10,000.00), or both;

(C) If ten (10) or more grams or twenty (20) or more dosage units, but less than thirty (30) grams or forty (40) dosage units, by imprisonment for not more than ten (10) years or a fine of not more than Twenty Thousand Dollars ($20,000.00), or both;

(D) For thirty (30) or more grams or forty (40) or more dosage units, but less than five hundred (500) grams or two thousand five hundred (2,500) dosage units, by imprisonment for not more than fifteen (15) years or a fine of not more than Fifty Thousand Dollars ($50,000.00), or both.

(c) **Simple possession.** It is unlawful for any person knowingly or intentionally to possess any controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this article. The penalties for any violation of this subsection (c) with respect to a controlled substance classified in Schedules I, II, III, IV or V, as set out in Section 41-29-113, 41-29-115, 41-29-117, 41-29-119 or 41-29-121, including marijuana or synthetic cannabinoids, shall be based on dosage unit as defined herein or the weight of the controlled substance as set forth herein as appropriate:

"Dosage unit (d.u.)" means a tablet or capsule, or in the case of a liquid solution, one (1) milliliter. In the case of lysergic acid diethylamide (LSD) the term, "dosage unit" means a stamp, square, dot, microdot, tablet or capsule of a controlled substance.

For any controlled substance that does not fall within the definition of the term "dosage unit," the penalties shall be based upon the weight of the controlled substance.

The weight set forth refers to the entire weight of any mixture or substance containing a detectable amount of the controlled substance.

If a mixture or substance contains more than one (1) controlled substance, the weight of the mixture or substance is assigned to the controlled substance that results in the greater punishment.

A person shall be charged and sentenced as follows for a violation of this subsection with respect to:

(1) A controlled substance classified in Schedule I or II, except marijuana and synthetic cannabinoids:

(A) If less than one-tenth (0.1) gram or two (2) dosage units, the violation is a misdemeanor and punishable by imprisonment for not more than one (1) year or a fine of not more than One Thousand Dollars ($1,000.00), or both.

(B) If one-tenth (0.1) gram or more or two (2) or more dosage units, but less than two (2) grams or ten (10) dosage units, by imprisonment for not more than three (3) years or a fine of not more than Fifty Thousand Dollars ($50,000.00), or both.

(C) If two (2) or more grams or ten (10) or more dosage units, but less than ten (10) grams or twenty (20) dosage units, by imprisonment for not more than eight (8) years or a fine of not more than Two Hundred Fifty Thousand Dollars ($250,000.00), or both.

(D) If ten (10) or more grams or twenty (20) or more dosage units, but less than thirty (30) grams or forty (40) dosage units, by imprisonment for not less than three (3) years nor more than twenty (20) years or a fine of not more than Five Hundred Thousand Dollars ($500,000.00), or both.

(2)(A) Marijuana and synthetic cannabinoids:

1. If thirty (30) grams or less of marijuana or ten (10) grams or less of synthetic cannabinoids, by a fine of not less than One Hundred Dollars ($100.00) nor more than Two Hundred Fifty Dollars ($250.00). The provisions of this paragraph (2)(A) may be enforceable by summons if the offender provides proof of identity satisfactory to the arresting officer and gives written promise to appear in court satisfactory to the arresting officer, as directed by the summons. A second conviction under this section within two (2) years is a misdemeanor punishable by a fine of Two Hundred Fifty Dollars ($250.00), not more than sixty (60) days in the county jail, and mandatory participation in a drug education program approved by the Division of Alcohol and Drug Abuse of the State Department of Mental Health, unless the court enters a written finding that a drug education program is inappropriate. A third or subsequent conviction under this paragraph (2)(A) within two (2) years is a misdemeanor punishable by a fine of not less than Two Hundred Fifty Dollars ($250.00) nor more than One Thousand Dollars ($1,000.00) and confinement for not more than six (6) months in the county jail.

Upon a first or second conviction under this paragraph (2)(A), the courts shall forward a report of the conviction to the Mississippi Bureau of Narcotics which shall make and maintain a private, nonpublic record for a period not to exceed two (2) years from the date of conviction. The private, nonpublic record shall be solely for the use of the courts in determining the penalties which attach upon conviction under this paragraph (2)(A) and shall not constitute a criminal record for the purpose of private or administrative inquiry and the record of each conviction shall be expunged at the end of the period of two (2) years following the date of such conviction;

2. Additionally, a person who is the operator of a motor vehicle, who possesses on his person or knowingly keeps or allows to be kept in a motor vehicle within the area of the vehicle normally occupied by the driver or passengers, more than one (1) gram, but not more than thirty (30) grams of marijuana or not more than ten (10) grams of synthetic cannabinoids is guilty of a misdemeanor and, upon conviction, may be

fined not more than One Thousand Dollars ($1,000.00) or confined for not more than ninety (90) days in the county jail, or both. For the purposes of this subsection, such area of the vehicle shall not include the trunk of the motor vehicle or the areas not normally occupied by the driver or passengers if the vehicle is not equipped with a trunk. A utility or glove compartment shall be deemed to be within the area occupied by the driver and passengers;

(B) Marijuana:

1. If more than thirty (30) grams but less than two hundred fifty (250) grams, by a fine of not more than One Thousand Dollars ($1,000.00), or confinement in the county jail for not more than one (1) year, or both; or by a fine of not more than Three Thousand Dollars ($3,000.00), or imprisonment in the custody of the Department of Corrections for not more than three (3) years, or both;

2. If two hundred fifty (250) or more grams but less than five hundred (500) grams, by imprisonment for not less than two (2) years nor more than eight (8) years or by a fine of not more than Fifty Thousand Dollars ($50,000.00), or both;

3. If five hundred (500) or more grams but less than one (1) kilogram, by imprisonment for not less than four (4) years nor more than sixteen (16) years or a fine of not more than Two Hundred Fifty Thousand Dollars ($250,000.00), or both;

4. If one (1) kilogram or more but less than five (5) kilograms, by imprisonment for not less than six (6) years nor more than twenty-four (24) years or a fine of not more than Five Hundred Thousand Dollars ($500,000.00), or both;

5. If five (5) kilograms or more, by imprisonment for not less than ten (10) years nor more than thirty (30) years or a fine of not more than One Million Dollars ($1,000,000.00), or both.

(C) Synthetic cannabinoids:

1. If more than ten (10) grams but less than twenty (20) grams, by a fine of not more than One Thousand Dollars ($1,000.00), or confinement in the county jail for not more than one (1) year, or both; or by a fine of not more than Three Thousand Dollars ($3,000.00), or imprisonment in the custody of the Department of Corrections for not more than three (3) years, or both;

2. If twenty (20) or more grams but less than forty (40) grams, by imprisonment for not less than two (2) years nor more than eight (8) years or by a fine of not more than Fifty Thousand Dollars ($50,000.00), or both;

3. If forty (40) or more grams but less than two hundred (200) grams, by imprisonment for not less than four (4) years nor more than sixteen (16) years or a fine of not more than Two Hundred Fifty Thousand Dollars ($250,000.00), or both;

4. If two hundred (200) or more grams, by imprisonment for not less than six (6) years nor more than twenty-four (24) years or a fine of not more than Five Hundred Thousand Dollars ($500,000.00), or both.

(3) A controlled substance classified in Schedule III, IV or V as set out in Sections 41-29-117 through 41-29-121, upon conviction, may be punished as follows:

(A) If less than fifty (50) grams or less than one hundred (100) dosage units, the offense is a misdemeanor and punishable by not more than one (1) year or a fine of not more than One Thousand Dollars ($1,000.00), or both.

(B) If fifty (50) or more grams or one hundred (100) or more dosage units, but less than one hundred fifty (150) grams or five hundred (500) dosage units, by imprisonment for not less than one (1) year nor more than four (4) years or a fine of not more than Ten Thousand Dollars ($10,000.00), or both.

(C) If one hundred fifty (150) or more grams or five hundred (500) or more dosage units, but less than three hundred (300) grams or one thousand (1,000) dosage units, by imprisonment for not less than two (2) years nor more than eight (8) years or a fine of not more than Fifty Thousand Dollars ($50,000.00), or both.

(D) If three hundred (300) or more grams or one thousand (1,000) or more dosage units, but less than five hundred (500) grams or two thousand five hundred (2,500) dosage units, by imprisonment for not less than four (4) years nor more than sixteen (16) years or a fine of not more than Two Hundred Fifty Thousand Dollars ($250,000.00), or both.

(d) **Paraphernalia.** (1) It is unlawful for a person who is not authorized by the State Board of Medical Licensure, State Board of Pharmacy, or other lawful authority to use, or to possess with intent to use, paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substances Law. Any person who violates this subsection (d)(1) is guilty of a misdemeanor and, upon conviction, may be confined in the county jail for not more than six (6) months, or fined not more than Five Hundred Dollars ($500.00), or both; however, no person shall be charged with a violation of this subsection when such person is also charged with the possession of thirty (30) grams or less of marijuana under subsection (c)(2)(A) of this section.

(2) It is unlawful for any person to deliver, sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell, paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substances Law. Except as provided in subsection (d)(3), a person who violates this subsection (d)(2) is guilty of a misdemeanor and, upon conviction, may be confined in the county jail for not more than six (6) months, or fined not more than Five Hundred Dollars ($500.00), or both.

(3) Any person eighteen (18) years of age or over who violates subsection (d)(2) of this section by delivering or selling paraphernalia to a person under eighteen (18) years of age who is at least three (3) years his junior is guilty of a misdemeanor and, upon conviction, may be confined in the county jail for not more than one (1) year, or fined not more than One Thousand Dollars ($1,000.00), or both.

(4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as paraphernalia. Any person who violates this subsection is guilty of a misdemeanor and, upon conviction, may be confined in the county jail for not more than six (6) months, or fined not more than Five Hundred Dollars ($500.00), or both.

(e) It shall be unlawful for any physician practicing medicine in this state to prescribe, dispense or administer any amphetamine or amphetamine-like anorectics and/or central nervous system stimulants classified in Schedule II, pursuant to Section 41-29-115, for the exclusive treatment of obesity, weight control or weight loss. Any person who violates this subsection, upon conviction, is guilty of a misdemeanor and may be confined for a period not to exceed six (6) months, or fined not more than One Thousand Dollars ($1,000.00), or both.

(f) **Trafficking.** (1) Any person trafficking in controlled substances shall be guilty of a felony and, upon conviction, shall be imprisoned for a term of not less than ten (10) years nor more than forty (40) years and shall be fined not less than Five Thousand Dollars ($5,000.00) nor more than One Million Dollars ($1,000,000.00). The ten-year mandatory sentence shall not be reduced or suspended. The person shall not be eligible for probation or parole, the provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, to the contrary notwithstanding.

(2) "Trafficking in controlled substances" as used herein means:

(A) A violation of subsection (a) of this section involving thirty (30) or more grams or forty (40) or more dosage units of a Schedule I or II controlled substance except marijuana and synthetic cannabinoids;

(B) A violation of subsection (a) of this section involving five hundred (500) or more grams or two thousand five hundred (2,500) or more dosage units of a Schedule III, IV or V controlled substance;

(C) A violation of subsection (c) of this section involving thirty (30) or more grams or forty (40) or more dosage units of a Schedule I or II controlled substance except marijuana and synthetic cannabinoids;

(D) A violation of subsection (c) of this section involving five hundred (500) or more grams or two thousand five hundred (2,500) or more dosage units of a Schedule III, IV or V controlled substance; or

(E) A violation of subsection (a) of this section involving one (1) kilogram or more of marijuana or two hundred (200) grams or more of synthetic cannabinoids.

(g) **Aggravated trafficking.** Any person trafficking in Schedule I or II controlled substances, except marijuana and synthetic cannabinoids, of two hundred (200) grams or more shall be guilty of aggravated trafficking and, upon conviction, shall be sentenced to a term of not less than twenty-five (25) years nor more than life in prison and shall be fined not less than Five Thousand Dollars ($5,000.00) nor more than One Million Dollars ($1,000,000.00). The twenty-five-year sentence shall be a mandatory sentence and shall not be reduced or suspended. The person shall not be eligible for probation or parole, the provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, to the contrary notwithstanding.

(h) **Sentence mitigation.** (1) Notwithstanding any provision of this section, a person who has been convicted of an offense under this section that requires the judge to impose a prison sentence which cannot be suspended or reduced and is ineligible for probation or parole may, at the discretion of the court, receive a sentence of imprisonment that is no less than twenty-five percent (25%) of the sentence prescribed by the applicable statute. In considering whether to apply the departure from the sentence prescribed, the court shall conclude that:

(A) The offender was not a leader of the criminal enterprise;

(B) The offender did not use violence or a weapon during the crime;

(C) The offense did not result in a death or serious bodily injury of a person not a party to the criminal enterprise; and

(D) The interests of justice are not served by the imposition of the prescribed mandatory sentence.

The court may also consider whether information and assistance were furnished to a law enforcement agency, or its designee, which, in the opinion of the trial judge, objectively should or would have aided in the arrest or prosecution of others who violate this subsection. The accused shall have adequate opportunity to develop and make a record of all information and assistance so furnished.

(2) If the court reduces the prescribed sentence pursuant to this subsection, it must specify on the record the circumstances warranting the departure.

HISTORY:

Codes, 1942, § 6831-70; Laws, 1971, ch. 521, § 20; Laws, 1972, ch. 520, § 7; Laws, 1977, ch. 482, § 1; Laws, 1981, ch. 502, § 5; Laws, 1982, chs. 323, § 2, 501, § 1; Laws, 1986, ch. 417; Laws, 1989, ch. 569, § 2; Laws, 1995, ch. 368, § 1; Laws, 1998, ch. 506, § 1; Laws, 1999, ch. 341, § 1; Laws, 2004, ch. 437, § 1; Laws, 2005, ch. 463, § 2; Laws, 2011, ch. 363, § 2; Laws, 2014, ch. 457, § 37; Laws, 2016, ch. 482, § 1, eff from and after July 1, 2016.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (d)(1) by substituting "thirty (30) grams or less" for "thirty (30 grams or less." The Joint Committee ratified the correction at its August 5, 2016, meeting.

Cross References —

Provision making it a criminal offense to receive or expend funds derived from commission of a felony under this section or to finance or invest funds in furtherance of commission of such felony, see § 41-29-140.

Enhanced penalties for sale of controlled substances within certain distances of schools, see § 41-29-142.

Heavier penalty to adult violating controlled substance prohibitions with respect to providing substance to a minor, see § 41-29-145.

Persons convicted and sentenced under provisions of certain subsections of this section not being considered for probation, parole and the like for the first three years of sentence, see § 41-29-149.

Drug education and treatment provided persons convicted under this section, jurisdiction of such persons, and probation of first offenders under this section, see § 41-29-150.

Exclusion from forfeiture conveyances involved in minor marihuana violations, see § 41-29-153(a)(4)(D).

Authority of local peace officers to enforce this section, see § 41-29-159.

Juvenile names and addresses of those who violate this section as public records, see § 43-21-261.

Imposition and collection of separate laboratory analysis fee in addition to any other assessments and costs imposed by statute on every individual convicted of a felony, see § 45-1-29.

Ineligibility to have earned time applied to first three years of sentence of offenders convicted under this section requiring mandatory term of confinement, see § 47-5-139.

Ineligibility for earned probation program of persons convicted of offense requiring mandatory prison term under this section for which probation is not allowed, see § 47-7-47.

Suspension of driving privileges of person convicted of violations of Uniform Controlled Substance Law, see § 63-1-71.

Punishment for conspiracy to commit certain crimes enumerated in this section, see § 97-1-1.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see §§ 97-43-1 et seq.

Ineligibility of persons charged under provisions of this section for dismissal of action upon successful completion of certain court-imposed conditions, see § 99-15-26.

Ineligibility of person charged under this section to participate in pretrial intervention program, see § 99-15-107.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or felony violation, see § 99-19-73.

Imposition of state assessment in addition to all other state assessments due under § 99-19-73 and all court imposed fines or other penalties for any violation of this section, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

I. IN GENERAL.

1. In general.
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10. Lesser included offenses.

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29. —Sale or distribution or intent as to same.
30. —Manufacture.
31. Best evidence.

I. IN GENERAL.

1. In general.

Trial court erred by granting a residential drug and alcohol treatment facility summary judgment based on the wrongful conduct rule in a medical malpractice action, even though the deceased patient violated the law by possessing a controlled substance without a prescription, where the facility had a duty to safeguard him from controlled substances, the facility had a duty to use reasonable care to assess, monitor, and treat the patient after his first urine sample indicated the presence of the controlled substance, and the facility's owner kept the controlled substance in his unlocked desk drawer for several years and kept no inventories or records of dispensing the controlled substance in violation of state and federal laws, and it was foreseeable that the patient, who had sought treatment for abusing prescription drugs, would attempt to secure prescription drugs. Cahn v. COPAC, Inc., 198 So. 3d 347, 2015 Miss. App. LEXIS 644 (Miss. Ct. App. 2015), cert. denied, 202 So. 3d 613, 2016 Miss. LEXIS 361 (Miss. 2016), cert. denied, — So. 3d —, 2016 Miss. LEXIS 365 (Miss. 2016).

Possession of cocaine, being a lesser-included crime of the sale of cocaine, merged into the sale charge; thus, defendant's conviction for possession of cocaine was reversed. Edwards v. State, 878 So. 2d 1106, 2004 Miss. App. LEXIS 707 (Miss. Ct. App. 2004).

Defendant, convicted for selling 0.1 gram of cocaine to an informant, was improperly sentenced to 15 years imprisonment, 8 years to be suspended subject to post-release supervision; the length of time on post-release supervision was discretionary and no length was stated. This sentence was consecutive to the sentence of 15 years, 4 to serve and 11 suspended already being served; Miss. Code Ann. § 41-29-139(b)(1), provided for a maximum of 30 years imprisonment. Johnson v. State, 2004 Miss. App. LEXIS 594 (Miss. Ct. App. June 22, 2004), op. withdrawn, sub. op., 924 So. 2d 527, 2004 Miss. App. LEXIS 667 (Miss. Ct. App. 2004).

In a prosecution under Miss. Code Ann. § 97-3-47, where defendant admitted giving the victim two oxycodone pills (for which he had a prescription) and finding her unconscious the next morning; the victim's brother testified that he saw defendant attempt to inject the victim with the drug, that she later appeared intoxicated, became ill, and vomited; a pathologist testified that the oxycodone level in the victim's blood was about 5 ½ times higher than the toxic level of oxycodone; and delivery of oxycodone, a Schedule II controlled substance, was itself a crime, the evidence sufficiently proved that the defendant was guilty of manslaughter by culpable negligence. Nichols v. State, 868 So. 2d 355, 2003 Miss. App. LEXIS 682 (Miss. Ct. App. 2003), cert. denied, 868 So. 2d 345, 2004 Miss. LEXIS 255 (Miss. 2004).

Thirty-year sentence for sale of crack cocaine was within the discretion of the trial court and was not unduly harsh or excessive. Allen v. State, 826 So. 2d 756, 2002 Miss. App. LEXIS 418 (Miss. Ct. App. 2002).

Being under the influence of marijuana is not a designated criminal offense under our statutes except in conjunction with the operation of a vehicle. Murray v. State, 310 So. 2d 919, 1975 Miss. LEXIS 1921 (Miss. 1975).

2. Construction.

From a plain reading of the statute, it is clear that, in Miss. Code Ann. § 41-29-313, the legislature criminalized the possession, purchase, transfer or distribution of 250 dosage units or 15 grams of weight of pseudoephedrine, and the State has prosecutorial discretion to choose between dosage unit or weight when the drug appears in dosage unit form. Miss. Code Ann. § 41-29-139 does not alter the plain meaning, but provides guidance as to how to proceed when the drug is not in dosage unit form. Finn v. State, 978 So. 2d 1270, 2008 Miss. LEXIS 179 (Miss. 2008).

Section 41-29-139(a)(1) is merely the provision that defines the prohibitive acts and § 41-29-139(b)(1) is the sentencing provision for subsection (a); the penalty section for a violation of section (a)(1) is in section (b)(1). The discrepancy in the code section is due to the fact that the conspiracy statute section dealing with enhanced sentencing for controlled substances–§ 97-1-1–directly refers to the sentencing provision under § 41-29-139. Thus, a sentence of 20 years imprisonment with 5 years suspended and a fine of $10,658.50 did not exceed that provided for in § 97-1-1 where the defendant was convicted of conspiracy to possess cocaine with intent to sell, barter, transfer or distribute, since § 97-1-1 provides for a fine not to exceed $500,000 and/or imprisonment for not more than 20 years where the crime conspired to be committed is a violation of § 41-29-139(b)(1). Lane v. State, 562 So. 2d 1235, 1990 Miss. LEXIS 234 (Miss. 1990).

Since a statute requires possession of no minimum amount of pentazocine, a scheduled II controlled substance, in order to constitute a crime, possession of any identifiable amount of the substance, however slight, constitutes a crime. Hampton v. State, 498 So. 2d 384, 1986 Miss. LEXIS 2866 (Miss. 1986).

In a prosecution for possession of marijuana with intent to deliver, the word "deliver" in the indictment was equivalent to the statutory term "transfer" as used in § 41-29-139. Evans v. State, 460 So. 2d 824, 1984 Miss. LEXIS 2020 (Miss. 1984).

Where ¶ (2) of subsection (a) of Code 1942, § 6831-70 provides that possession of LSD, being a controlled substance classified in schedule I of the Controlled Substances Law, is a felony, but subsection (c) of Code 1942, § 6831-70 provides that possession of a controlled substance is a misdemeanor, the provisions of the section are in direct conflict, and a defendant convicted of possession of LSD must be sentenced as for a misdemeanor. Johnson v. State, 260 So. 2d 436, 1972 Miss. LEXIS 1557 (Miss. 1972).

Under the rule of construction that words or phrases may be supplied by the courts and inserted in a statute, where that is necessary to obviate repugnancy and inconsistency in the statute, complete the sense thereof, and give effect to the intention of the legislature manifested therein, it is clear that the intent of the legislature was to permit one guilty of possession of controlled substances to be punished either under subsection (a) or under the lesser punishment of subsection (c) of Code 1942, § 6831-70. Johnson v. State, 260 So. 2d 436, 1972 Miss. LEXIS 1557 (Miss. 1972).

3. Constitutional questions.

Because defendant lacked a reasonable expectation of privacy in the vehicle in which defendant was a passenger, defendant possessed no standing to challenge a police officer's search and seizure of a pouch containing methamphetamine that the officer observed in the vehicle. Nowell v. State, 246 So. 3d 77, 2018 Miss. App. LEXIS 210 (Miss. Ct. App. 2018).

Defendant was properly convicted for the sale of cocaine because the testimony of the technical reviewer of the report which was prepared by the analyst who did the actual testing of the recovered substance did not violate defendant's right to confrontation under U.S. Const. amend. VI, when the reviewer said that the substance was cocaine. Miller v. State, 144 So. 3d 199, 2014 Miss. App. LEXIS 54 (Miss. Ct. App.), cert. denied, 145 So. 3d 674, 2014 Miss. LEXIS 402 (Miss. 2014).

Defendant was not denied a right to a fair trial on a charge of selling of cocaine, in violation of Miss. Code Ann. § 41-29-139(a), by two prosecutors' improper "link-in-the-chain" and "send-a-message" comments during closing arguments where the strength of the State's evidence against defendant was such that if the comments were removed, beyond a reasonable doubt, the jury would have reached the same verdict based on the evidence. Harris v. State, 37 So. 3d 1237, 2010 Miss. App. LEXIS 337 (Miss. Ct. App. 2010).

Defendant's conviction for possession of cocaine, more then 10 grams, but less than 30 grams, in violation of Miss. Code Ann. § 41-29-139(c)(1)(D), was appropriate because his right to a speedy trial was not violated, in part because there was no actual prejudice to defendant as a result of the delay between arrest and trial. Further, defendant was aware of the possibility that charges would be brought against him as a result of his arrest and he did not seek any resolution of the charges until after he was served with the indictment in June 2006. Williams v. State, 5 So. 3d 496, 2008 Miss. App. LEXIS 639 (Miss. Ct. App. 2008), cert. denied, 11 So. 3d 1250, 2009 Miss. LEXIS 135 (Miss. 2009).

Post-conviction relief was denied in a case where appellant inmate entered a guilty plea to three counts of selling cocaine because the imposition of three consecutive five-year sentences did not amount to cruel and unusual punishment. The sentence was within the guidelines in Miss. Code Ann. § 41-29-139, and there was no evidence of excessiveness under the facts of the case. Ramsey v. State, 973 So. 2d 294, 2008 Miss. App. LEXIS 28 (Miss. Ct. App. 2008).

Defendant was convicted under the subsection that criminalizes the sale of a controlled substance, Miss. Code Ann. § 41-29-139(b), while Miss. Code Ann. § 41-29-139(c) proscribed possession of a controlled substance, and these were two different provisions dealing with two different situations, and they were not ambiguous, as they each clearly stated their purpose; the statute was not unconstitutionally vague as a person of ordinary intelligence would understand by reading the statute that he could face significant prison time for selling cocaine, and the sale of controlled substances did not infringe on any of defendant's constitutionally protected rights. Westbrook v. State, 953 So. 2d 286, 2007 Miss. App. LEXIS 199 (Miss. Ct. App.), cert. dismissed, 962 So. 2d 38, 2007 Miss. LEXIS 436 (Miss. 2007).

A sentence of twenty years for selling cocaine was not cruel and unusual. The sentence was well within the statutory maximum of Miss. Code Ann. § 41-29-139(b)(1), and a threshold comparison of the crime to the sentence yielded no inference of gross disproportionality. Triplett v. State, 840 So. 2d 727, 2002 Miss. App. LEXIS 871 (Miss. Ct. App. 2002).

Inmate's double jeopardy rights were not violated as he was not subject to multiple prosecutions or multiple punishments; since the inmate pled guilty to and was sentenced for an offense with maximum sentence of 30 years and a fine, his 30-year sentence was within statutory limits. King v. State, 821 So. 2d 864, 2002 Miss. App. LEXIS 103 (Miss. Ct. App. 2002).

The "self-help" provision contained in subsection (f) of this section is unconstitutionally vague based on the due process clause of the Fourteenth Amendment to the United States Constitution. However, the clear intent of the legislature is that the statute is severable and, therefore, the remainder of the subsection is effective. Lewis v. State, 765 So. 2d 493, 2000 Miss. LEXIS 138 (Miss. 2000).

Issue of whether trial court erred in declaring unconstitutionally void for vagueness statute imposing sentence of life imprisonment without parole for making multiple sales of narcotics was not properly before the Supreme Court, where matter did not appear in record. Medina v. State, 688 So. 2d 727, 1996 Miss. LEXIS 635 (Miss. 1996).

Actual conflict of interest, violating defendant's right to effective assistance of counsel, resulted from public defender's representation of both codefendant during plea negotiations and defendant at trial in prosecution originating from simultaneous double sale of drugs. Smith v. State, 666 So. 2d 810, 1995 Miss. LEXIS 628 (Miss. 1995).

In a prosecution for possession of cocaine with intent to distribute, the defendant was denied his constitutional right to effective assistance of counsel where the defense strategy was to admit guilt to the charge of simple possession of cocaine, but to deny any intent to sell or distribute, the defense counsel failed to object to evidence of the defendant's past drug sales, which was the most damaging piece of evidence presented, he failed to preserve any objection relating to the sufficiency of the evidence for trial court or appellate review, and the evidence was insufficient as a matter of law to support the charge. Holland v. State, 656 So. 2d 1192, 1995 Miss. LEXIS 261 (Miss. 1995).

In a prosecution for sale of a controlled substance, the defendant was not deprived of his constitutional right to confront witnesses on the ground that the State failed to provide information as to the whereabouts of an informant where the defendant did not allege any bad faith by the State, and the State provided evidence as to its good faith attempt to locate the informant. Campbell v. Campbell, 618 So. 2d 116, 1993 Miss. LEXIS 200 (Miss. 1993).

In a prosecution for possession of cocaine with intent to distribute, the defendant's trial counsel was not constitutionally ineffective for failing to object to allegedly inadmissible testimony portraying the defendant as a drug dealer where the attorney's failure to object to the testimony in question might reasonably have been trial strategy related to a "personal vendetta" defense since the attorney argued from the time of opening statements that a deputy sheriff had a vendetta against the defendant and there was support for the "vendetta" defense throughout the trial record, the attorney could have concluded that any objections to the testimony in question would have magnified the comments to the detriment of the defendant, and the defendant failed to demonstrate any prejudice as there was eyewitness testimony which was "sufficient to have absolutely sealed his fate with the jury." Edwards v. State, 615 So. 2d 590, 1993 Miss. LEXIS 97 (Miss. 1993).

In a prosecution for possession of cocaine with intent to distribute, the defendant's trial counsel was not constitutionally ineffective for failing to object to an admission made by the defendant at the scene of his arrest concerning his involvement in trafficking drugs where the admission was unsolicited, voluntary, and spontaneous, and the defendant's attorney could have reasonably expected any objection to be futile. Edwards v. State, 615 So. 2d 590, 1993 Miss. LEXIS 97 (Miss. 1993).

The use of an undercover narcotics agent to enter the premises and purchase cocaine without a search warrant did not violate the defendant's Fourth Amendment rights. Bradley v. State, 562 So. 2d 1276, 1990 Miss. LEXIS 267 (Miss. 1990).

Inability of state to produce seized marijuana for testing by defendant, because the substances had been stolen from storage, did not infringe defendant's right to cross-examine state's witnesses, where defense counsel did cross-examine the state's drug analyst on her procedure for testing marijuana. Coyne v. State, 484 So. 2d 1018, 1986 Miss. LEXIS 2415 (Miss. 1986).

Where the sale of marijuana for which appellant was convicted occurred when the maximum penalty for such sale was four years imprisonment or a fine of two thousand dollars, or both, the trial court erred in sentencing appellant to a term of ten years and fining him five thousand dollars under the provisions of Code 1972, § 41-29-139, which did not become effective until after the sale in question had occurred; punishment for a crime may not be increased after the crime has been committed under the provisions of Miss Const § 16 and U.S. Const Art 1 § 10 Cl 1. King v. State, 304 So. 2d 650, 1974 Miss. LEXIS 1466 (Miss. 1974).

The fact that the legislature changed the penalty in May, 1972, so as to again make it a felony for one to have in his possession more than one ounce of marijuana, did not take effect until after its enactment and did not result in making the crime, for which the defendant was previously tried, a felony. Boring v. Mississippi State Board of Dental Examiners, 300 So. 2d 135, 1974 Miss. LEXIS 1606 (Miss. 1974).

Since an 8 year sentence for sale of marijuana did not exceed the statutory limits, the sentence could not be either cruel or unusual punishment. McCormick v. State, 279 So. 2d 596, 1973 Miss. LEXIS 1469 (Miss. 1973), overruled in part, Hopson v. State, 625 So. 2d 395, 1993 Miss. LEXIS 422 (Miss. 1993).

4. Guilty plea.

Summary dismissal of a post-conviction motion under Miss. Code Ann. § 99-39-11(2) was proper as the inmate's due process rights were not violated and his guilty plea was knowing, intelligent, and voluntary where: (1) the indictment was not amended, and charged the inmate with possessing more than two grams but less than ten grams of cocaine with the intent to sell under Miss. Code Ann. § 41-29-139(a)(1); (2) the trial court thoroughly advised the inmate of his rights, the nature and elements of the charge against him, and the consequences of his guilty plea; (3) there was a factual basis for the plea under Miss. Unif. Cir. & Cty. R. 8.04(A)(3); (4) the trial court was satisfied that the inmate understood the trial court's explanations, and waived his rights as a criminal defendant; and (5) the trial court was also satisfied with the inmate's and defense counsel's responses as to the inmate's alleged mental illness. Hunt v. State, 99 So. 3d 269, 2012 Miss. App. LEXIS 636 (Miss. Ct. App. 2012).

Where appellant was arrested for the sale of cocaine after an undercover officer purchased the cocaine from him, appellant requested the videotape of the transaction during discovery; the State complied with Miss. Unif. Cir. & Cty. R. 9.04 by giving the tape to defense counsel who viewed it. The fact that appellant did not view the videotape before entering his guilty plea did not affect the voluntariness of his guilty plea to the sale of cocaine under Miss. Code Ann. § 41-29-139; the record showed that the trial judge informed appellant of the charges against him, the consequences of his plea, and the penalties provided by law. Gray v. State, 29 So. 3d 791, 2009 Miss. App. LEXIS 464 (Miss. Ct. App. 2009), cert. denied, 2010 Miss. LEXIS 139 (Miss. Mar. 11, 2010).

Defendant's guilty plea to possession of more than two grams but less than ten grams of cocaine pursuant to Miss. Code Ann. § 41-29-139 (Rev. 2005) was freely, voluntarily, and intelligently given because defendant stated that he sought to plead guilty to possession of 5.67 grams of cocaine in his petition to enter a plea of guilty and agreed that he was aware of and understood the charges during his plea colloquy. In addition, the fact that the trial court did not to inform defendant of his right to appeal the resulting sentence under Miss. Code Ann. § 99-35-101 (Rev. 2007) did not make his plea not voluntary or unintelligent because the trial court was not required to do so. Harris v. State, 5 So. 3d 1127, 2008 Miss. App. LEXIS 477 (Miss. Ct. App. 2008), cert. denied, 11 So. 3d 1250, 2009 Miss. LEXIS 181 (Miss. 2009).

Dismissal of the inmate's petition for post-conviction relief was proper because, by entering a plea of guilty to the sale of hydromorphone in violation of Miss. Code Ann. § 41-29-139, he had waived his right to challenge the state's evidence. The inmate's valid guilty plea waived his right to make certain constitutional challenges, including those under the Fourth Amendment. Burns v. State, 984 So. 2d 1024, 2008 Miss. App. LEXIS 46 (Miss. Ct. App. 2008).

Post-conviction relief was summarily denied in a case where defendant entered a guilty plea to the sale of cocaine under Miss. Code Ann. § 41-29-139 because the record and his sworn statements at the plea colloquy contradicted his later claim that the plea was not entered knowingly, voluntarily, and intelligently. Belton v. State, 968 So. 2d 501, 2007 Miss. App. LEXIS 179 (Miss. Ct. App.), cert. denied, 968 So. 2d 948, 2007 Miss. LEXIS 643 (Miss. 2007).

II. ELEMENTS OF OFFENSE.

5. Possession; constructive possession.

Record was uncontradicted that defendant lacked actual possession of the cocaine at the time of his arrest, so the State had the burden to prove he had constructive possession of it. Haynes v. State, — So. 3d —, 2018 Miss. LEXIS 236 (Miss. May 31, 2018).

Evidence was legally sufficient to support defendant's conviction of possession of cocaine, as cocaine was discovered in plain view in the car ashtray, next to where defendant was sitting in the passenger seat, he admitted to having snorted the cocaine with the driver, which showed he had dominion and control over it, and although the driver said the cocaine belonged to him, this did not foreclose the jury from finding that defendant also possessed the cocaine. Haynes v. State, — So. 3d —, 2018 Miss. LEXIS 236 (Miss. May 31, 2018).

Defendant failed to prove by a preponderance of the evidence that he was actually innocent of possessing marijuana with intent to distribute, and thus the denial of his claim for compensation under the wrongful-conviction and restitution statute was proper; he admitted that he was voluntarily in the home where marijuana was actually being cut and bagged for distribution, a detective testified that it appeared that defendant had either placed a package of marijuana in a bowl or he was reaching for a package, and the trial court found the detective credible, and thus defendant failed to show that he did not constructively possess the marijuana found in the home. Martin v. State, 221 So. 3d 374, 2016 Miss. App. LEXIS 721 (Miss. Ct. App. 2016), cert. denied, 220 So. 3d 977, 2017 Miss. LEXIS 260 (Miss. 2017).

Substantial evidence supported defendant's conviction for possession of more than 30 grams but less than 250 grams of marijuana, as a second or subsequent offense, because defendant constructively possessed the marijuana by

(1) being aware of the marijuana's presence and character, (2) having dominion and control over the marijuana, and (3) intending to possess the marijuana. Carver v. State, 227 So. 3d 1149, 2016 Miss. App. LEXIS 698 (Miss. Ct. App. 2016), rev'd, 227 So. 3d 1090, 2017 Miss. LEXIS 415 (Miss. 2017).

Sufficient evidence supported a conviction of possession of a controlled substance in violation of Miss. Code Ann. § 41-29-139(c)(1) (2005) because defendant had dominion and control over crack cocaine, which he had accepted from the driver of a car and held and concealed in his hand at the time police made a traffic stop of the vehicle. Lewis v. State, 17 So. 3d 618, 2009 Miss. App. LEXIS 584 (Miss. Ct. App. 2009).

Evidence was legally sufficient to establish defendant's constructive possession of drugs found in his residence during the execution of a search warrant because no one else was found in the house, defendant's wife was outside the residence when the police arrived, three individuals were standing in the front yard and each denied possession of the drugs, defendant was found within arm's reach of a bag of crack cocaine found in a couch cushion and in close proximity to a bag containing cocaine and hydromorphone that was discovered on the kitchen floor in front of the refrigerator, and no one else was found inside the house near the couch where the cocaine was found. Roach v. State, 7 So. 3d 911, 2009 Miss. LEXIS 199 (Miss.), cert. denied, 558 U.S. 949, 130 S. Ct. 399, 175 L. Ed. 2d 274, 2009 U.S. LEXIS 7474 (U.S. 2009).

Where law enforcement officers obtained a search warrant to search a camper, where they entered the camper and found three individuals–the camper's owner, defendant, and a third party, where drugs were in plain view on a table in close proximity to defendant upon the law enforcement officers' entry into the camper, and where defendant subsequently confessed that the drugs belonged to her and that she manufactured methamphetamine, the weight of the evidence supported the jury's finding of constructive possession, even though defendant recanted her confession and the camper's owner testified that the drugs did not belong to defendant; because the jury's verdict was not contrary to the weight of the evidence, the trial court did not err in denying defendant's motion for a new trial. Cheatham v. State, 12 So. 3d 598, 2009 Miss. App. LEXIS 381 (Miss. Ct. App. 2009).

When an officer saw defendant drop a bag at his feet, the recovered bag was confirmed through testing to contain crack cocaine. During defendant's trial for possession of cocaine, the trial court did not err in denying his instruction as to actual possession because it was not required to sustain a conviction under Miss. Code Ann. § 41-29-139; the trial court properly granted the State's instructions as to constructive possession. Butler v. State, 19 So. 3d 111, 2009 Miss. App. LEXIS 154 (Miss. Ct. App.), cert. denied, 19 So. 3d 82, 2009 Miss. LEXIS 490 (Miss. 2009).

Post-conviction relief was properly denied where defendant entered a guilty plea to possession of cocaine because there was a factual basis for his plea under Miss. Unif. Cir. & County Ct. Prac. R. 8.04(A)(3) based on the plea itself and the testimony of an officer about drugs, cash, and other items found in a car where defendant was a passenger. The fact that defendant was riding in a rental car and crossing state lines was enough to show that he had dominion and control over the items. Ealey v. State, 967 So. 2d 685, 2007 Miss. App. LEXIS 733 (Miss. Ct. App. 2007).

Motion for a new trial was properly denied where defendant was convicted of possession of a controlled substance because he failed to rebut the presumption that he was in constructive possession of drugs found in the trunk of his car; allowing the verdict to stand would not have sanctioned an unconscionable injustice because it was not so contrary to the overwhelming weight of the evidence presented. This was not an exceptional case where the evidence presented weighed heavily against the verdict. Robinson v. State, 967 So. 2d 695, 2007 Miss. App. LEXIS 731 (Miss. Ct. App. 2007).

Motion for a directed verdict or judgment notwithstanding the verdict was properly denied where defendant was convicted of possession of a controlled substance because he failed to rebut the presumption that he was in constructive possession of drugs found in the trunk of his car; it was for the jury to decide if the drugs were placed there by a nephew. Additionally, there was other incriminating evidence connecting defendant to the drugs; defendant was the sole owner and occupant of the car, an odor of marijuana was detected, and he refused a search of the trunk. Robinson v. State, 967 So. 2d 695, 2007 Miss. App. LEXIS 731 (Miss. Ct. App. 2007).

Motion for a directed verdict was properly denied in a drug case under Miss. Code Ann. § 41-29-139 because constructive possession was shown where defendant was driving his cousin's car, which contained a very large amount of marijuana; the fact that defendant made an incriminating statement regarding his use of the drugs was significant. Stingley v. State, 966 So. 2d 1269, 2007 Miss. App. LEXIS 723 (Miss. Ct. App. 2007).

Motion for a new trial was properly denied in a case involving the possession of methamphetamine because the evidence was sufficient to support the conviction; defendant's dominion and control over the drugs was established by a girlfriend's testimony about their respective roles in selling methamphetamine. Bailey v. State, 981 So. 2d 972, 2007 Miss. App. LEXIS 418 (Miss. Ct. App. 2007).

Evidence was insufficient to sustain convictions for possession of cocaine with intent to deliver because each defendant did not constructively possess the other's drugs; beside defendants being in the car together, no additional evidence of constructive possession was cited. Dixon v. State, 953 So. 2d 1108, 2007 Miss. LEXIS 210 (Miss. 2007).

In a case where defendant was convicted of possession of marijuana and possession of cocaine, there was no reason for a trial court to grant a peremptory instruction since the evidence was sufficient to show that defendant, a passenger in the vehicle, was in constructive possession of drugs found under the seat where an officer saw him attempting to conceal a package, the driver testified that defendant had the bag containing the drugs when he entered the vehicle, and defendant stated that the items did not belong to him when the officer found them, even though he was unable to see inside the vehicle. Walker v. State, 962 So. 2d 39, 2006 Miss. App. LEXIS 911 (Miss. Ct. App. 2006), cert. denied, 962 So. 2d 38, 2007 Miss. LEXIS 419 (Miss. 2007).

There was sufficient evidence to convict defendant of possession of marijuana with intent to distribute where the evidence showed that defendant was in actual or constructive possession of a residence or the marijuana; the utilities and rent agreement were in someone else's name, however defendant stayed overnight there, his clothes were found inside, other bills in defendant's name were mailed to the residence, and defendant's license and registration had the address of arrest on them. Caldwell v. State, 938 So. 2d 317, 2006 Miss. App. LEXIS 674 (Miss. Ct. App. 2006).

There was sufficient evidence supporting defendant's conviction for possession and manufacture of illegal substances where a rational jury could have found the dominion and control needed to show constructive possession by defendant were present; the jury instruction as given was a sufficient and accurate statement of the law regarding constructive possession. Gross v. State, 948 So. 2d 439, 2006 Miss. App. LEXIS 645 (Miss. Ct. App. 2006).

As to the issue of possession under Miss. Code Ann. § 41-29-139(a)(1), evidence was sufficient to sustain a conviction where defendants were both aware of the presence and character of cocaine when they were in a car, even though neither party had the entire 20 grams in their physical possession. Dixon v. State, 953 So. 2d 1117, 2006 Miss. App. LEXIS 434 (Miss. Ct. App. 2006), aff'd, 953 So. 2d 1108, 2007 Miss. LEXIS 210 (Miss. 2007).

Trial court did not abuse its discretion in admitting a witness's testimony that defendant was present at a drug transaction in which the witness pawned her car to and purchased crack cocaine from a person who then asked defendant to drive the witness home, which he did, but instead of returning with the car, defendant kept it for himself. The evidence was relevant to show how defendant came into possession of the car, thereby helping to establish that defendant was in possession of the cocaine found in the car in violation of Miss. Code Ann. § 41-29-139. Nelson v. State, 914 So. 2d 265, 2005 Miss. App. LEXIS 739 (Miss. Ct. App. 2005).

In a drug case, there was insufficient evidence to establish constructive possession of precursor chemicals under Miss. Code Ann. § 41-29-313(1)(a)(i) based on mere proximity to a methamphetamine laboratory located under a trailer; testimony of an alleged accomplice was insufficient to establish control over two precursor chemicals, as required. Kerns v. State, 923 So. 2d 210, 2005 Miss. App. LEXIS 243 (Miss. Ct. App.), aff'd in part and rev'd in part, 923 So. 2d 196, 2005 Miss. LEXIS 799 (Miss. 2005).

Defendant neither testified at trial nor produced witnesses in order to rebut the presumption that he was driving the truck and that he was found to have constructive possession over the methamphetamine. Spencer v. State, 908 So. 2d 783, 2005 Miss. App. LEXIS 123 (Miss. Ct. App.), cert. denied, 920 So. 2d 1008, 2005 Miss. LEXIS 498 (Miss. 2005).

Defendant's conviction for possession of cocaine with intent to distribute was proper where there was sufficient evidence that he exercised dominion and control over the drugs establishing constructive possession. Williams v. State, 892 So. 2d 272, 2004 Miss. App. LEXIS 1002 (Miss. Ct. App. 2004), cert. denied, 901 So. 2d 1273, 2005 Miss. LEXIS 288 (Miss. 2005).

Where defendant was convicted of possession of more than 30 grams, but less than 250 grams of marijuana, the fact of defendant's proximity to the paraphernalia at the scene was relevant in showing constructive possession, and defendant's argument that the mobile home was owned solely by defendant's wife, was not a defense, in light of defendant's own statements, and other evidence showing defendant's constructive possession. Parks v. State, 853 So. 2d 884, 2003 Miss. App. LEXIS 793 (Miss. Ct. App. 2003).

Facts that defendant was first seen in the bedroom where the marijuana was recovered, and that defendant had 2.7 grams of it on defendant's person, supported a finding of constructive possession, and additionally, two marijuana cigarettes were found in a pair of men's overalls, and no other male lived in the mobile home. Parks v. State, 853 So. 2d 884, 2003 Miss. App. LEXIS 793 (Miss. Ct. App. 2003).

To prove constructive possession of drugs, state must have provided evidence that contraband was under dominion and control of defendant; where defendant is not in control of premises, state has burden of providing competent evidence which would connect defendant to drugs, and, if competent evidence fails to connect defendant with contraband, then accused is entitled to acquittal. Jackson v. State, 689 So. 2d 760, 1997 Miss. LEXIS 39 (Miss. 1997), superseded, Monroe v. Monroe, 745 So. 2d 249, 1999 Miss. LEXIS 229 (Miss. 1999).

Defendants had constructive possession of cocaine carried by defendants' accomplice, who was employee at defendants' place of business and who followed defendants to location of drug delivery in automobile rented by one defendant. Jackson v. State, 689 So. 2d 760, 1997 Miss. LEXIS 39 (Miss. 1997), superseded, Monroe v. Monroe, 745 So. 2d 249, 1999 Miss. LEXIS 229 (Miss. 1999).

Possession, no matter how fleeting, is sufficient to sustain a conviction; possession is defined, however, in terms of the exercise of dominion and control, and the factor of control is essential. Berry v. State, 652 So. 2d 745, 1995 Miss. LEXIS 156 (Miss. 1995).

When contraband is found on the premises, there must be evidence, in addition to physical proximity, showing that the defendant consciously exercised control over the contraband, in order to sustain a finding of constructive possession. Cunningham v. State, 583 So. 2d 960, 1991 Miss. LEXIS 448 (Miss. 1991).

A trial court properly refused an instruction that the State was required to prove that the defendant had dominion and control over cocaine sufficient to establish possessory interest in order to find the defendants guilty of possession of cocaine, where there was clear evidence establishing actual possession by the defendant from the testimony of a police detective who actually saw the defendant with a canister of cocaine packets; such an instruction deals with constructive possession and would only be appropriate if there were no evidence establishing actual possession of the contraband. Hicks v. State, 580 So. 2d 1302, 1991 Miss. LEXIS 318 (Miss. 1991).

In order to prove possession, the State must prove that the defendant exercised dominion over the contraband and that the defendant was aware of the presence and character of the substance. Campbell v. State, 566 So. 2d 475, 1990 Miss. LEXIS 455 (Miss. 1990).

6. Sale, transfer, or delivery; who may be guilty.

Appellant's conviction for the sale of a controlled substance was affirmed because the jury viewed the DVD and made its own conclusions; the DVD showed the confidential informant repeatedly asking the friend and appellant about the pills and how many she could buy for twenty dollars. Campbell v. State, 993 So. 2d 413, 2008 Miss. App. LEXIS 385 (Miss. Ct. App. 2008).

Identification evidence was sufficient to convict defendant as the seller of cocaine to an agent. A second agent, who knew defendant from previous contacts, identified him in a videotape of the transaction; the testimony was sufficient to enable a rational jury to conclude that defendant was the person in the video and the one who made the sale. Downing v. State, 981 So. 2d 334, 2008 Miss. App. LEXIS 203 (Miss. Ct. App. 2008).

Where defendant gave cocaine to another, who sold the cocaine to a buyer, defendant was properly convicted of selling cocaine, a Schedule II controlled substance, in violation of Miss. Code Ann. §§ 41-29-139(a)(1) and 41-29-142(1), because defendant's act was a constructive transfer. Pratt v. State, 870 So. 2d 1241, 2004 Miss. App. LEXIS 273 (Miss. Ct. App. 2004).

Appellate court rejected defendant's argument that the evidence was insufficient to sustain defendant's conviction because defendant was never identified by anyone but the informant, where the taped footage showed the informant talking to defendant and exchanging money for two rocks of crack cocaine, and that footage was backed by the informant's testimony and that of a surveillance officer who testified that the voice on the audiotape was the defendant's. Pulliam v. State, 873 So. 2d 124, 2004 Miss. App. LEXIS 119 (Miss. Ct. App. 2004).

Defendant's conviction for the sale of cocaine was proper where the officer's testimony more than adequately met the requirements for a legally sufficient identification of defendant. Cousar v. State, 855 So. 2d 993, 2003 Miss. LEXIS 338 (Miss. 2003).

No transfer of marijuana occurred where, following an automobile accident, the defendant, who was a passenger in one of the vehicles involved in the accident, momentarily passed a shaving kit containing marijuana to a bystander, presumably in an effort to dispose of it before law enforcement officers arrived; while the activity may have been an attempt to conceal evidence, it was not a criminal transfer because it was never shown that the bystander intended to take possession or accept a "transfer" of a controlled substance. Meek v. State, 2001 Miss. LEXIS 80 (Miss. Apr. 5, 2001), op.

withdrawn, sub. op., 806 So. 2d 236, 2001 Miss. LEXIS 266 (Miss. 2001).

The statute does not permit a defense based on the assertion that the defendant was not engaged in the sale of drugs, but was merely a conduit for another. Lyons v. State, 766 So. 2d 38, 2000 Miss. App. LEXIS 298 (Miss. Ct. App. 2000).

The exchange of consideration, the intent to place the contraband in commerce, and even the success of the transfer are irrelevant to a factual determination of transfer or delivery. Meek v. State, 2000 Miss. App. LEXIS 64 (Miss. Ct. App. Feb. 8, 2000), rev'd, 2001 Miss. LEXIS 80 (Miss. Apr. 5, 2001).

This section requires only that the state prove that a defendant knowingly or intentionally transferred a controlled substance; the state is not required to prove that the defendant personally placed the substance in the hands of the buyer or even knew the buyer prior to the sale. Sullivan v. State, 749 So. 2d 983, 1999 Miss. LEXIS 347 (Miss. 1999).

The defendant's willingness to assist another person, no matter who that person was, in completing two separate drug sales was sufficient to implicate him as a principal in the transactions. Flowers v. State, 726 So. 2d 185, 1998 Miss. App. LEXIS 955 (Miss. Ct. App. 1998).

It was not necessary for the prosecution to prove that the defendant exercised dominion and control over the cocaine or that he personally profited from its sale. Turner v. State, 573 So. 2d 1340, 1990 Miss. LEXIS 832 (Miss. 1990).

The word "distribute" includes transactions which are sales as well as transactions which may not be considered sales; thus, there was no material variance between an indictment and the evidence offered at trial where the defendant was indicted for distribution of a controlled substance and the proof evinced a sale of a controlled substance. Rogers v. State, 599 So. 2d 930, 1992 Miss. LEXIS 123 (Miss.), overruled in part, Mayfield v. State, 612 So. 2d 1120, 1992 Miss. LEXIS 861 (Miss. 1992).

In a prosecution for distribution of a controlled substance, the State sufficiently established that the crystal methamphetamine distributed by the defendant constituted a "controlled substance," even though the crime lab expert did not identify the substance as being solely methamphetamine but testified that it was a combination of amphetamine and methamphetamine, since a drug which contains any amount of methamphetamine is considered a controlled substance under § 41-29-115(a), (c)(3). Rogers v. State, 599 So. 2d 930, 1992 Miss. LEXIS 123 (Miss.), overruled in part, Mayfield v. State, 612 So. 2d 1120, 1992 Miss. LEXIS 861 (Miss. 1992).

In a prosecution for distribution of crystal methamphetamine, there was sufficient proof as to the type of schedule controlled substance crystal methamphetamine was, where a crime lab expert testified that the substance contained amphetamine and methamphetamine, since methamphetamine is listed as a controlled substance under § 41-29-115(a), (c)(3). Rogers v. State, 599 So. 2d 930, 1992 Miss. LEXIS 123 (Miss.), overruled in part, Mayfield v. State, 612 So. 2d 1120, 1992 Miss. LEXIS 861 (Miss. 1992).

Person who is personally present at drug transaction and who aids and abets sale may be convicted for sale notwithstanding that person never has control of drug and receives no remuneration or consideration. Minor v. State, 482 So. 2d 1107, 1986 Miss. LEXIS 2352 (Miss. 1986).

A defendant who arranged a sale of heroin, received a "finders fee" for locating the purchaser, and was present during the transaction was properly convicted as a principal even though the defendant did not personally transfer the heroin and did not actually receive payment for the heroin. Washington v. State, 341 So. 2d 663, 1977 Miss. LEXIS 2276 (Miss. 1977).

Section 41-29-139(c)(2)does not contemplate that the seller must realize a profit in order to be guilty of the sale of a controlled substance. Boone v. State, 291 So. 2d 182, 1974 Miss. LEXIS 1723 (Miss. 1974).

A person convicted for the sale of LSD should be sentenced under Code 1942 § 6831-70(a)(2), for the legislative intent in the use of the word "delivery" and was to relieve the state of the task, often difficult if not impossible, of proving the consideration paid for the contraband, its intentions being to thwart the exchange or transfer of the substance whether accompanied by consideration or not. Wilkins v. State, 273 So. 2d 177, 1973 Miss. LEXIS 1563 (Miss. 1973).

7. Intent.

Sufficient evidence supported defendant's conviction for possession of marijuana in an amount less than 30 grams with intent to distribute because defendant's admission that defendant knew marijuana defendant brought to a party would be shared showed intent to distribute. Johnson v. State, 194 So. 3d 191, 2016 Miss. App. LEXIS 384 (Miss. Ct. App. 2016).

Evidence was sufficient to show that defendant intended to distribute drugs because the evidence was uncontradicted that defendant had more drugs than he could use for his personal consumption. King v. State, 987 So. 2d 490, 2008 Miss. App. LEXIS 404 (Miss. Ct. App. 2008).

Where the evidence showed that cocaine was sold to an informant on the date of the crime, money from this transaction was found in money discarded during a police chase, and the drugs were packaged in a way that suggested distribution, there was sufficient evidence to support convictions under Miss. Code Ann. § 41-29-139(a)(1) on the issue of intent. Dixon v. State, 953 So. 2d 1117, 2006 Miss. App. LEXIS 434 (Miss. Ct. App. 2006), aff'd, 953 So. 2d 1108, 2007 Miss. LEXIS 210 (Miss. 2007).

The phrase "intent to sell" does not apply to all the actions criminalized by the statute; a conviction may be sustained if there is evidence that a person sold, manufactured or transferred contraband or if there is evidence that a person still possessing the contraband had the intention to sell, manufacture, or transfer. Meek v. State, 2000 Miss. App. LEXIS 64 (Miss. Ct. App. Feb. 8, 2000), rev'd, 2001 Miss. LEXIS 80 (Miss. Apr. 5, 2001).

Intent to distribute or dispense controlled substances may be established by circumstantial evidence. Jackson v. State, 689 So. 2d 760, 1997 Miss. LEXIS 39 (Miss. 1997), superseded, Monroe v. Monroe, 745 So. 2d 249, 1999 Miss. LEXIS 229 (Miss. 1999).

Where controlled substance is present in amount which person could reasonably hold for personal use, other evidence of possible involvement in drug trade may be sufficient to establish intent to deliver. Jackson v. State, 689 So. 2d 760, 1997 Miss. LEXIS 39 (Miss. 1997), superseded, Monroe v. Monroe, 745 So. 2d 249, 1999 Miss. LEXIS 229 (Miss. 1999).

The quantity and nature of contraband may be sufficient to establish an intent to distribute; the State must prove that the amount possessed exceeds a personal consumption amount; each case must be adjudged on its own facts, but whatever the facts, the mere suspicion of intent cannot support a conviction, as the State must prove intent beyond a reasonable doubt. Esparaza v. State, 595 So. 2d 418, 1992 Miss. LEXIS 71 (Miss. 1992).

An offense under § 41-29-139(c) is an offense prohibited by law (mala prohibita) and it is not necessary for the state to prove criminal intent. Boone v. State, 291 So. 2d 182, 1974 Miss. LEXIS 1723 (Miss. 1974).

8. Quantity.

There was sufficient evidence for the jury to conclude that defendant possessed between .1 gram and two grams of methadone because, based on the relatively homogeneous nature of the pill fragments which were recovered, it was not necessary for an examiner for the Mississippi Crime Laboratory, who tested one pill fragment and testified at trial, to have tested every pill fragment. Fay v. State, 133 So. 3d 841, 2013 Miss. App. LEXIS 445 (Miss. Ct. App. 2013), cert. denied, 133 So. 3d 818, 2014 Miss. LEXIS 149 (Miss. 2014).

Indictment for sale of cocaine under Miss. Code Ann. § 41-29-139(a)(1), (b)(1) (2005) was not defective for omitting the weight or quantity of cocaine sold because the penalty was the same regardless of the quantity sold; thus the amount of cocaine sold was not an essential element of the crime. Smith v. State, 973 So. 2d 1003, 2007 Miss. App. LEXIS 728 (Miss. Ct. App. 2007).

Miss. Code Ann. § 41-29-313 does not provide any discretionary privileges to prosecutors concerning the unit of measurement that should be used in prosecuting drug cases where dosage units are the standard form of measurement, and the weight of the drug is considered a default measurement where the drug is not found in "dosage unit" form; therefore, a motion for post-conviction relief should have been granted because a sentence imposed was illegal where defendant had 180 tablets that weighed above the requisite number of grams. Finn v. State, 979 So. 2d 1, 2007 Miss. App. LEXIS 451 (Miss. Ct. App. 2007), rev'd, 978 So. 2d 1270, 2008 Miss. LEXIS 179 (Miss. 2008).

In a case where defendant entered a guilty plea to the sale of cocaine, post-conviction relief was properly denied because an indictment was not ineffective based on a failure to include the amount of drugs sold; this was not an essential element of the crime. Belton v. State, 968 So. 2d 501, 2007 Miss. App. LEXIS 179 (Miss. Ct. App.), cert. denied, 968 So. 2d 948, 2007 Miss. LEXIS 643 (Miss. 2007).

Defendant's challenge in a post-conviction proceeding to the sufficiency of an indictment because the indictment improperly put forth the quantity of cocaine that was sold was without merit because Miss. Code Ann. § 41-29-139 did not require an indictment to state the amount of cocaine that was allegedly sold. Andrews v. State, 937 So. 2d 483, 2006 Miss. App. LEXIS 642 (Miss. Ct. App. 2006).

Where defendant was convicted of possessing 0.1 gram of cocaine under Miss. Code Ann. § 41-29-139, the State sufficiently proved the quantity of cocaine defendant had possessed pursuant to Miss. Code Ann. § 41-29-139(c)(1)(B); the State's crime lab expert, who analyzed the substance for the presence of a controlled substance, testified that the analysis proved the presence of cocaine and that the weight was 0.1 gram, so the entire amount was properly considered with regard to defendant's conviction. Walker v. State, 880 So. 2d 1074, 2004 Miss. App. LEXIS 765 (Miss. Ct. App. 2004).

Where cocaine is incorporated into some other substance, the legislature intended that the weight of the entire mixture be taken as the weight for purposes of criminal liability. Lewis v. State, 765 So. 2d 493, 2000 Miss. LEXIS 138 (Miss. 2000).

This section requires no minimum amount in order to constitute a crime and, therefore, the existence of cocaine residue is sufficient to support a conviction. Carroll v. State, 755 So. 2d 483, 1999 Miss. App. LEXIS 111 (Miss. Ct. App. 1999).

In a prosecution for distribution of a controlled substance, the State sufficiently established that the crystal methamphetamine distributed by the defendant constituted a "controlled substance," even though the crime lab expert did not identify the substance as being solely methamphetamine but testified that it was a combination of amphetamine and methamphetamine, since a drug which contains any amount of methamphetamine is considered a controlled substance under § 41-29-115(a), (c)(3). Rogers v. State, 599 So. 2d 930, 1992 Miss. LEXIS 123 (Miss.), overruled in part, Mayfield v. State, 612 So. 2d 1120, 1992 Miss. LEXIS 861 (Miss. 1992).

The quantity and nature of contraband may be sufficient to establish an intent to distribute; the State must prove that the amount possessed exceeds a personal consumption amount; each case must be adjudged on its own facts, but whatever the facts, the mere suspicion of intent cannot support a conviction, as the State must prove intent beyond a reasonable doubt. Esparaza v. State, 595 So. 2d 418, 1992 Miss. LEXIS 71 (Miss. 1992).

119.6 grams of marijuana-laden brownies could not be aggregated with 912.3 grams of pure marijuana to satisfy the one kilogram or more marijuana requirement of § 41-29-139(c)(2)(D). Drane v. State, 493 So. 2d 294, 1986 Miss. LEXIS 2379 (Miss. 1986), cert. denied, 482 U.S. 916, 107 S. Ct. 3189, 96 L. Ed. 2d 677, 1987 U.S. LEXIS 2537 (U.S. 1987).

A defendant was improperly convicted of possession of more than one ounce of marijuana where the marijuana in his possession weighed 29.8 grams which, although more than the avoirdupois ounce of 28.3 grams, was less than the troy or apothecaries ounce of 31.1 grams; if the legislature had intended for the avoirdupois ounce to be used, it would have distinguished the avoirdupois ounce from the troy or apothecaries ounce as specified in the National Bureau of Standards Handbook which provides that the word "avoirdupois" or the abbreviation "avdp" be used to specify that unit of weight. The imposition of a sentence of five years for possession of phencyclidine, a Schedule I drug, was excessive under § 41-29-139 which provides for a sentence not exceeding three years for possession of a controlled substance classified as a Schedule I or II drug. Horton v. State, 408 So. 2d 1197, 1982 Miss. LEXIS 1850 (Miss. 1982).

9. Conspiracy.

The evidence was insufficient to support a conviction for conspiracy to sell cocaine where the defendant directed the buyer to the seller's house, accompanied the buyer to the door, knocked on the door, told the seller that they wanted to purchase cocaine, and remained with the buyer and seller while the sale took place, but there was no evidence that the seller knew that the defendant would bring the buyer to his home; although an agreement to sell cocaine could possibly be inferred, there was insufficient evidence of the alleged conspirators' recognition that they were "entering into a common plan and knowingly intended to further its common purpose." Johnson v. State, 642 So. 2d 924, 1994 Miss. LEXIS 443 (Miss. 1994).

The uncorroborated testimony of an alleged accomplice was insufficient to support a conviction for conspiracy to manufacture marijuana where the accomplice contradicted himself concerning payments allegedly made to him by the defendant, and another witness' testimony substantially impeached that of the accomplice; although the other witness had reasons for bias and a fair-minded juror could reject his testimony as unconvincing, it could not be discarded so completely as to eliminate reasonable doubt, particularly when combined with the accomplice's self-contradictory statements. Flanagan v. State, 605 So. 2d 753, 1992 Miss. LEXIS 449 (Miss. 1992).

Evidence that a police officer, while standing outside an apartment door, overheard a conversation between 3 people inside the apartment concerning a sale of cocaine, was insufficient to support a conviction for conspiracy to distribute the cocaine where the statements overheard by the officer were not identified as coming from any particular person. Mickel v. State, 602 So. 2d 1160, 1992 Miss. LEXIS 203 (Miss. 1992).

On trial of felony charge of conspiring to distribute more than one kilogram of marijuana, giving of instructions which would allow the jury to find defendants guilty based on acts in furtherance of the conspiracy without requiring a separate finding that they knowingly became a part of the agreement to commit the crime, while erroneous, did not require reversal, where defendants failed to object, and the deficiency of the instructions was cured by other instructions given. Gray v. State, 487 So. 2d 1304, 1986 Miss. LEXIS 2441 (Miss. 1986).

Conviction of conspiracy was not supported by evidence which, although raising strong suspicions that defendant and others were illegally involved in drug related activities, failed to show that they had intended or agreed to sell, barter, transfer, and distribute marijuana. McCray v. State, 486 So. 2d 1247, 1986 Miss. LEXIS 2888 (Miss. 1986).

Conviction for conspiracy to possess and distribute controlled substances does not require showing of positive and mutual agreement; all that must be shown is concert of free will; conspiracy may be proved by acts of parties or by circumstances, as well as by agreement. Griffin v. State, 480 So. 2d 1124, 1985 Miss. LEXIS 2383 (Miss. 1985).

10. Lesser included offenses.

In a case convicting defendant of possession of controlled substance with intent to distribute, the evidence presented could only justify a conviction of the principal charge of possession with intent, and the trial court did not err by refusing the lesser-included-offense instruction of simple possession because defendant initially testified that he was unaware of any drugs in the house and later admitted that he was just a middleman. Anderson v. State, 195 So. 3d 835, 2016 Miss. App. LEXIS 20 (Miss. Ct. App.), cert. denied, 209 So. 3d 433, 2016 Miss. LEXIS 301 (Miss. 2016).

Defendant was not entitled to a lesser-included offense instruction for simple possession on his conviction of transfer of a controlled substance, because defendant argued that he did not participate in the sale of the drugs nor did he have anything to do with the drugs, and given defendant's argument at trial that he had nothing to do with the drugs, the appellate court could not find that a jury instruction on simple possession was warranted. Duckworth v. State, 989 So. 2d 917, 2007 Miss. App. LEXIS 819 (Miss. Ct. App. 2007), cert. denied, 993 So. 2d 832, 2008 Miss. LEXIS 426 (Miss. 2008).

Where the only evidence of a smaller amount of marijuana was the fact that defendant only paid $70, and the price of an ounce was around $100, this was insufficient to entitle him to a lesser included instruction on the crime of possession of less than one ounce of marijuana; the laboratory report showed that the amount found was more than one ounce. Walker v. State, 962 So. 2d 39, 2006 Miss. App. LEXIS 911 (Miss. Ct. App. 2006), cert. denied, 962 So. 2d 38, 2007 Miss. LEXIS 419 (Miss. 2007).

Where defendant was convicted of possession of 0.1 gram of cocaine in violation of Miss. Code Ann. § 41-29-139, the trial court did not err in failing to give the jury a lesser-included offense instruction regarding the possession of less than 0.1 gram of cocaine; since there was no evidence offered that the substance weighed less than 0.1 gram, there was no evidentiary support for the instruction that defendant requested. Walker v. State, 880 So. 2d 1074, 2004 Miss. App. LEXIS 765 (Miss. Ct. App. 2004).

Since state's evidence showing defendant had possession of 119.6 grams of marijuana-laden brownies and 912.3 grams of pure marijuana was insufficient to support a conviction of possession of one kilogram or more under § 41-29-139(c)(2)(D), because the weights could not be aggregated, but did establish defendant's guilt of the lesser offense of possession of more than one ounce, but less than one kilogram, under subpart (c)(2)(C) of the same statute, the proper procedure for the Supreme Court was to remand the case for resentencing on the lesser offense. Drane v. State, 493 So. 2d 294, 1986 Miss. LEXIS 2379 (Miss. 1986), cert. denied, 482 U.S. 916, 107 S. Ct. 3189, 96 L. Ed. 2d 677, 1987 U.S. LEXIS 2537 (U.S. 1987).

Defendant charged with sale and delivery of marijuana is not entitled to instruction of lessor included offense of possession of marijuana where testimony of defendant in his own behalf is practically tantamount to confession that he sold and delivered marijuana, if not to undercover agent in person, than to confidential informant in agent's presence. Messer v. State, 483 So. 2d 338, 1986 Miss. LEXIS 2368 (Miss. 1986).

Although due to a temporary legislative oversight the possession of marijuana with intent to sell is not made unlawful by statute, a conviction for possession of marijuana with intent to sell would not require reversal where the indictment properly charged the lesser included offense of possession of more than an ounce of marijuana. Mosley v. State, 358 So. 2d 1318, 1978 Miss. LEXIS 2576 (Miss. 1978).

Conviction of defendant of possession with intent to sell marijuana under § 41-29-139(a) was error since that section does not make it a criminal offense; conviction under § 41-29-139(d)(2)(B) was proper since evidence was uncontradicted that he had in his possession 59.4 pounds of marijuana. Joyce v. State, 327 So. 2d 255, 1976 Miss. LEXIS 1768 (Miss. 1976).

III. PROSECUTION; PROCEDURE.

11. Indictment.

Defendant's indictment was not insufficient because it alleged possession of AB-FUBINACA, rather than the chemical description applicable to the compound, as the use of a code name for a controlled substance rather than a chemical description did not fail to allege an essential element; AB FUBINACA was apparently a code name for a specific synthetic cannabinoid; the name appeared to be in widespread use; although AB-FUBINACA was not specifically listed in Schedule I of the Mississippi Uniform Controlled Substances Law, it was prohibited as it was a compound which had a skeletal molecular structure which was composed of an indazole carboxamide compound; and the defense was not prejudiced as defendant's attorney knew what AB-FUBINACA was. Maged Muthanna Saleh Qasoon v. State, 232 So. 3d 831, 2017 Miss. App. LEXIS 679 (Miss. Ct. App. 2017).

Evidence was sufficient to convict defendant of selling AB-FUBINACA because the proof at trial showed that he did in fact commit that crime as he was just as guilty of the same offense had the substance been an isomer of AB-FUBINACA rather than AB-FUBINACA itself; and the variance between the indictment alleging the distribution of AB-FUBINACA, and the proof that he distributed an isomer of AB-FUBINACA was not material. Maged Muthanna Saleh Qasoon v. State, 232 So. 3d 831, 2017 Miss. App. LEXIS 679 (Miss. Ct. App. 2017).

Circuit court properly denied petitioner's motion for postconviction relief because the criminal informations were not fatally defective; although the amount of cocaine was not listed in the criminal information, there was no requirement that the quantity of cocaine be listed, and petitioner was not charged, convicted, or sentenced for drug trafficking. Jackson v. State, 192 So. 3d 1143, 2016 Miss. App. LEXIS 370 (Miss. Ct. App. 2016).

Although defendant argued that the indictment in defendant's case impermissibly lowered the burden of proof, because the State of Mississippi's burden of proof was different for sales of controlled substances than for transfers of controlled substances, the intent of the deliver and transfer of narcotics statute was to thwart the exchange or transfer of a substance whether accompanied by consideration or not. Moreover, The State proved that defendant actually sold pills to police officers in exchange for cash. Hale v. State, 191 So. 3d 719, 2016 Miss. LEXIS 58 (Miss.), modified, — So. 3d —, 2016 Miss. LEXIS 205 (Miss. 2016).

In a case where defendant was originally indicted on the charge of unlawful sale of at least one-tenth but less than two grams of cocaine, and the indictment was amended to reflect the lesser-included offense of unlawful possession, but the amended indictment was later withdrawn, defendant's conviction for unlawful sale of cocaine was supported by the indictment as he was not exposed to a sudden increase in the charges or potential sentence available under the original indictment; the decision to withdraw the amended indictment did not materially alter the facts or the defense of the case as it stood with the original indictment; and defendant was afforded due process of law and given fair notice of the nature and cause of the accusation. McNulty v. State, 158 So. 3d 1179, 2014 Miss. App. LEXIS 635 (Miss. Ct. App. 2014), cert. denied, 168 So. 3d 962, 2015 Miss. LEXIS 385 (Miss. 2015).

Record reflected that defendant was convicted and sentenced for possession of a Schedule III substance, not a Schedule II substance, the State made no objection or attempt to classify the drug as a Schedule II substance, and defendant was not given the maximum sentence, such that he suffered no prejudice from the failure to identify in the indictment whether he was being charged with the sale of a Schedule II or Schedule III drug. Riley v. State, 126 So. 3d 1007, 2013 Miss. App. LEXIS 832 (Miss. Ct. App. 2013).

Defendant's indictment was not defective because it gave defendant reasonable notice of the charges against him, and he was not prejudiced in preparing his defense; there was no requirement that defendant's indictment contain the amount of the controlled substance that he sold. Whatley v. State, 123 So. 3d 461, 2013 Miss. App. LEXIS 28 (Miss. Ct. App.), cert. denied, 123 So. 3d 450, 2013 Miss. LEXIS 530 (Miss. 2013).

Appellant, who pled guilty to sale of a controlled substance in violation of Miss. Code Ann. § 41-29-139(a)(1), was not entitled to postconviction relief on grounds the indictment was defective for not stating the name of the buyer to whom he sold cocaine, as § 41-29-139(a)(1) did not list the identity of the buyer as an essential element of the crime. Garrett v. State, 110 So. 3d 790, 2012 Miss. App. LEXIS 483 (Miss. Ct. App. 2012), cert. denied, 110 So. 3d 789, 2013 Miss. LEXIS 245 (Miss. 2013).

Trial court did not err in denying appellant's petition for post-conviction relief because appellant failed to offer proof that the internal correction on the indictment charging him with the sale of cocaine was made after the grand jury approved the indictment, and the two offenses at the top of the indictment with the correct controlled substance of marijuana were typed in after the grand jury's approval; the indictment only had an internal inconsistency and did not contain the wrong controlled substance throughout. Miller v. State, 61 So. 3d 944, 2011 Miss. App. LEXIS 75 (Miss. Ct. App. 2011).

Although appellant alleged that his original indictment contained a defect because it only referenced the enhancement statute, Miss. Code Ann. § 41-29-142, not Miss. Code Ann. § 41-29-139, under which he ultimately pleaded guilty, it was apparent that the reason for the different statute was a result of appellant's plea agreement with the State in order to receive the more lenient sentence available under § 41-29-139; consequently, there was no error in the disparity between the indictment and sentencing order. Regardless, appellant waived any claim of defect with his entry of a guilty plea. Graham v. State, 2010 Miss. App. LEXIS 116 (Miss. Ct. App. Mar. 9, 2010), op. withdrawn, sub. op., 85 So. 3d 860, 2011 Miss. App. LEXIS 33 (Miss. Ct. App. 2011).

Indictment alleging that defendant sold cocaine was adequate because the indictment did not have to contain the alleged weight of the cocaine. Harris v. State, 17 So. 3d 1115, 2009 Miss. App. LEXIS 152 (Miss. Ct. App.), cert. denied, 17 So. 3d 99, 2009 Miss. LEXIS 452 (Miss. 2009).

Where defedant was charged with possession of a controlled substance with the intent to sell or distribute under Miss. Code Ann. § 41-29-139(a)(1), no prejudicial error occurred when the State was permitted to amend the indictment to allege that the crime was committed within 1,500 feet of a day care center instead of a park because the amendment did not change the crime for which defendant was charged but merely amended the allegations related to the enhancement provisions of Miss. Code Ann. § 41-29-142 to comport with the evidence that would be presented at trial. Further, because the indictment was amended six months before trial commenced, the defense was given sufficient notice to prepare and adjust their defense accordingly. Tarver v. State, 15 So. 3d 446, 2009 Miss. App. LEXIS 40 (Miss. Ct. App.), cert. denied, 15 So. 3d 426, 2009 Miss. LEXIS 398 (Miss. 2009).

Indictment was sufficient under Miss. Unif. Cir. & County Ct. Prac. 7.06 because it listed the state, court, and county in which the indictment was being brought. Furthermore, because the weight involved in a charge of possession of cocaine under Miss. Code Ann. § 41-29-139 only affected the penalty imposed, not the crime itself, there was no problem with the amendment of the indictment. Harris v. State, 5 So. 3d 1127, 2008 Miss. App. LEXIS 477 (Miss. Ct. App. 2008), cert. denied, 11 So. 3d 1250, 2009 Miss. LEXIS 181 (Miss. 2009).

Inmate was not entitled to post-conviction relief on the ground that the indictment was defective because the indictment charged the inmate with knowingly and intentionally selling cocaine in violation of Miss. Code Ann. § 41-29-139, which was sufficient to notify the inmate that the inmate was charged with the crime of knowingly and intentionally selling a Schedule II controlled substance under § 41-29-139(a)(1) and that the inmate could be sentenced under § 41-29-139(b)(1). Stepp v. State, 958 So. 2d 257, 2007 Miss. App. LEXIS 368 (Miss. Ct. App. 2007).

Defendant did not have a meritorious claim when he stated that he received ineffective assistance of counsel because counsel did not inform defendant about a "defect" in the indictment; the fact that the indictment did not set forth the price obtained for the cocaine or the weight of the cocaine did not make the indictment defective because price and weight were not elements of the crime. Dunlap v. State, 956 So. 2d 1088, 2007 Miss. App. LEXIS 348 (Miss. Ct. App. 2007).

Post-conviction relief was denied in a case where defendant was convicted of the sale of cocaine because the indictment satisfied Miss. Unif. Cir. & County Ct. Prac. R. 7.06 when it included the date that the offense was allegedly committed; moreover, the money received and the amount of cocaine did not have to be included in the indictment they were not elements of the crime under Miss. Code Ann. § 41-29-139(a)(1), (b)(1). Shorter v. State, 946 So. 2d 815, 2007 Miss. App. LEXIS 2 (Miss. Ct. App. 2007).

Defendant's indictment was not defective under Miss. Unif. Cir. & County Ct. Prac. R. 7.06 where defendant's assertion that the indictment needed to mention a particular quantity of drug was flawed, and cocaine was a Schedule II drug that was made criminal by Miss. Code Ann. § 41-29-139(c), and a particular quantity was not specified; thus, the amount of cocaine that defendant sold was not an essential element to the crime. Mosley v. State, 941 So. 2d 877, 2006 Miss. App. LEXIS 811 (Miss. Ct. App. 2006).

Even if a petition for post-conviction relief had not been procedurally barred, an indictment for the sale of cocaine was not fatally flawed for failing to state the amount of cocaine because this was not required. Glenn v. State, 940 So. 2d 969, 2006 Miss. App. LEXIS 779 (Miss. Ct. App. 2006).

Trial court properly denied a petition for post-conviction relief where an indictment was not invalid for failing to state the specific amount of cocaine that petitioner was charged with selling; there was no requirement that a specific amount of a controlled substance be found for a person to be convicted under Miss. Code Ann. § 41-29-139. Elliott v. State, 939 So. 2d 824, 2006 Miss. App. LEXIS 744 (Miss. Ct. App. 2006).

Indictment charging appellant with selling of cocaine was not required to allege the weight of the controlled substance, because it was not an element of the crime defined in Miss. Code Ann. § 41-29-139(a)(1); the indictment was valid because it charged that appellant did "knowingly and intentionally sell or transfer" cocaine. Hammond v. State, 938 So. 2d 375, 2006 Miss. App. LEXIS 690 (Miss. Ct. App. 2006).

So long as the state proved that defendant knowingly possessed the drugs in question, he in fact committed a felony according to Miss.

Code Ann. § 41-29-139; therefore, the language "willingly, unlawfully, feloniously" in the indictment was mere surplusage, and the fact that the form of the verdict instruction omitted this surplusage was not erroneous as it created no injustice. McKlemurry v. State, 947 So. 2d 987, 2006 Miss. App. LEXIS 493 (Miss. Ct. App. 2006), cert. denied, 947 So. 2d 960, 2007 Miss. LEXIS 78 (Miss. 2007).

Defendant's convictions for two counts of the sale of a controlled substance were appropriate because an amendment to her indictment served only to aid her since the sale of a Schedule III substance was penalized less severely than the sale of a Schedule II substance under Miss. Code Ann. § 41-29-139(b); her defense was not prejudiced by the amendment. Graham v. State, 935 So. 2d 1119, 2006 Miss. App. LEXIS 568 (Miss. Ct. App. 2006).

Defendant argued that due to the indictment's failure to specifically identify the confidential informant listed, his defense was unduly prejudiced and therefore the verdict should have been overturned. However, a review of the record showed defendant did not object to the contents of the indictment at the trial level, thus waiving this issue for appeal; in any event, such a variance between the indictment and the proof presented at trial was not considered a fatal variance, and the State thoroughly demonstrated that the subject individual purchased cocaine from defendant while acting as a confidential informant. Jerninghan v. State, 910 So. 2d 748, 2005 Miss. App. LEXIS 215 (Miss. Ct. App. 2005), cert. dismissed, 933 So. 2d 303, 2006 Miss. LEXIS 306 (Miss. 2006).

Where defendant was charged with possession of marihuana, the failure of the first grand jury to return a true bill against him did not terminate the prosecution against him. The two-year statute of limitations under Miss. Code Ann. § 99-1-5 was not a bar to his prosecution where he was arrested for the offense within two years of the date in which he allegedly committed it. State v. Parkman, 906 So. 2d 888, 2005 Miss. App. LEXIS 402 (Miss. Ct. App. 2005).

In a case related to the sale of cocaine, post-conviction relief was properly denied because appellant's indictment was not faulty, as neither Miss. Code Ann. § 41-29-139(a)(1) nor (b) required that a specific amount of cocaine be included in the indictment; although § 41-29-139(b) contained sentencing standards for crimes involving marijuana depending on the amount of the controlled substance, such limitations did not apply to crimes involving cocaine. Waites v. State, 872 So. 2d 758, 2004 Miss. App. LEXIS 429 (Miss. Ct. App. 2004).

Defendant alleged, in his claim for postconviction relief, that the indictment was defective as it failed to specify the amount of cocaine allegedly sold; however, the amount was not an essential element of the crime. Campbell v. State, 878 So. 2d 227, 2004 Miss. App. LEXIS 166 (Miss. Ct. App.), cert. denied, 878 So. 2d 66, 2004 Miss. LEXIS 909 (Miss. 2004).

Where defendant sold a substance represented to be cocaine to an undercover cooperating individual and defendant was subsequently arrested at his residence, where a bottle containing a substance resembling crack cocaine was discovered hidden under the kitchen sink, defendant was not subjected to double jeopardy because the indictment did not determine whether the cocaine in the residence was from the same quantity of the illegal illegal drug; it was not necessary for an indictment to so specifically identify the particular quantity of narcotic by language that it could, by those descriptive terms alone be distinguished from any other quantity of the same type of narcotic. Wright v. State, 863 So. 2d 1005, 2004 Miss. App. LEXIS 10 (Miss. Ct. App. 2004).

An indictment for unlawful possession of cocaine need not mention a particular quantity of the drug. Carroll v. State, 755 So. 2d 483, 1999 Miss. App. LEXIS 111 (Miss. Ct. App. 1999).

An indictment was sufficient where it charged the defendant, in plain language, with the crime of unlawful possession of cocaine; the indictment's failure to narrowly focus onto a particular subsection within the allegedly violated statute was not necessary to inform the defendant of the essential elements of the crime. Carroll v. State, 755 So. 2d 483, 1999 Miss. App. LEXIS 111 (Miss. Ct. App. 1999).

Issue of whether indictment was flawed as it charged two separate crimes within a single-count indictment was not properly before the Supreme Court, where defendant did not raise issue until after trial. Medina v. State, 688 So. 2d 727, 1996 Miss. LEXIS 635 (Miss. 1996).

Any error that resulted from indictment's possible duplication in charging two separate crimes within a single-count indictment was harmless, because ambiguity did not diminish defendant's ability to defend herself against charge on which she was ultimately convicted of transfer of cocaine; simple sale of cocaine on one occasion, for which defendant was found guilty, was quite clearly a lesser included offense of "drug kingpin" provision, regardless of whether that provision constituted an enhancement or an entirely separate crime. Medina v. State, 688 So. 2d 727, 1996 Miss. LEXIS 635 (Miss. 1996).

State may be allowed to proceed on indictment charging 5 counts of possession of controlled substances where crimes charged have same elements and proof, although carrying different maximum punishments, and arose from same transaction or occurrence; trial court properly recognizes different maximum punishments by sentencing defendant separately on each charge for which convicted. Dixon v. State, 465 So. 2d 1092, 1985 Miss. LEXIS 1994 (Miss. 1985).

An indictment charging defendant with conspiracy to "deliver" cocaine, in violation of § 41-29-139, was not faulty, even though the statute does not use the word "deliver", since "transfer", the word used in the statute, is the equivalent of "deliver"; moreover, pursuant to § 99-7-21, any defect in the indictment was waived, since defendant did not dumur to the indictment before the jury was impaneled. Gandy v. State, 438 So. 2d 279, 1983 Miss. LEXIS 2923 (Miss. 1983).

In a prosecution for the sale of marijuana where the indictment failed to specify whether the amount sold was more or less than one kilogram, the trial court properly held that if the defendant were convicted he would be sentenced under the statute which imposed the lessor punishment. Broadus v. State, 392 So. 2d 203, 1980 Miss. LEXIS 2146 (Miss. 1980).

Indictment charging appellant with the possession of more than one ounce of marijuana with intent to sell was erroneous as there is no statute making such possession with intent to sell a crime; however, as possession of more than one ounce of marijuana is a crime, the indictment charged appellant with a criminal offense and the words "with intent to sell" should have been stricken as surplusage. Schloder v. State, 310 So. 2d 721, 1975 Miss. LEXIS 1912 (Miss. 1975).

Where in a single count indictment, possession and production of a controlled substance is charged conjunctively, such possession and production constitute aspects of a single transaction and the possession, having been merely incidental to the production of the substance, does not constitute a charge of a separate or distinct offense, and consequently indictment charging defendant did possess and produce marijuana was not fatally defective. Wolf v. State, 281 So. 2d 445, 1973 Miss. LEXIS 1497 (Miss. 1973).

Where the sale of marijuana was a crime before the Uniform Controlled Substances Law of 1971 became effective, and likewise constituted a crime under the 1971 Law, an indictment charging the defendant with a violation of the Law by sale of marijuana before the effective date of the Law, sufficiently charged the crime of selling marijuana under prior law, and a referencing indictment to the Law was at most mere surplusage. Alston v. State, 258 So. 2d 436, 1972 Miss. LEXIS 1502 (Miss. 1972).

An indictment which charged that on a given date, the defendant wilfully, unlawfully, and feloniously sold marijuana contrary to the statute, charged the essentials of the offense and it was not necessary to state the name of the person who purchased the marijuana. Young v. State, 245 So. 2d 26, 1971 Miss. LEXIS 1353 (Miss. 1971).

12. Classification of offense.

Requirement that a conviction be vacated on grounds consistent with innocence is most naturally and plainly read to refer to innocence of the felony or felonies referenced in the immediately preceding paragraph, not to some broader notion of "innocence" of any and all related criminal activity, including misdemeanors. Therefore, appellant was entitled to relief because his conviction was vacated on the ground that he was innocent of the sole felony of which he was convicted, and the possession of certain pills constituted a misdemeanor. Moore v. State, 203 So. 3d 775, 2016 Miss. App. LEXIS 209 (Miss. Ct. App.), cert. denied, 204 So. 3d 290, 2016 Miss. LEXIS 480 (Miss. 2016).

13. Burden of proof.

By proving that the pills defendant transferred were Oxycodone, the State proved that she transferred a controlled substance in violation of Miss. Code Ann. § 41-29-139(a)(1) (2001) because Oxycodone was in fact a Schedule II controlled substance under Schedule II, Miss. Code Ann. § 41-29-115 (A)(a)(1)(xiv) (2001), and the designation of Oxycodone as a controlled substance was not a question of fact for the jury. Lawrence v. State, 928 So. 2d 894, 2005 Miss. App. LEXIS 745 (Miss. Ct. App. 2005).

Evidence that defendant to charge of possession of marijuana with intent to sell occupied and inhabited and had dominion and control over apartment, in bathroom of which 5 grocery bags of marijuana were found, is direct, not circumstantial, and does not saddle prosecution with heightened burden of proof of guilt to exclusion of every reasonable hypothesis consistent with innocence and does not entitle defendant to circumstantial evidence instruction. Keys v. State, 478 So. 2d 266, 1985 Miss. LEXIS 2260 (Miss. 1985).

In a drug prosecution, where owner of property the State sought to have forfeited was not charged with illegal conduct, all the State needed to prove, under § 41-29-139, was that the seized items were possessed by the defendant with the intent to be used in connection with an illegal smuggling conspiracy. Reed v. State, 460 So. 2d 115, 1984 Miss. LEXIS 2001 (Miss. 1984).

In the trial of a defendant charged with the crime of delivering marijuana to a named individual, and who was subsequently convicted there is no burden on the state to negate the assertion that the defendant was one of the persons privileged under the controlled dangerous substances law to possess marijuana. Heidelberg v. State, 272 So. 2d 922, 1973 Miss. LEXIS 1556 (Miss. 1973).

14. Multiple counts.

Defendant's right to protection against double jeopardy was not violated because he was subject to multiple punishments for possession with intent to distribute five separate controlled substances, because to obtain a verdict on each count, the State was required to prove beyond a reasonable doubt that each of the substances found in defendant's house was in fact a controlled substance under Miss. Code Ann. § 41-29-139 (Rev. 2009), and that defendant possessed and intended to sell each drug. Watkins v. State, 101 So. 3d 628, 2012 Miss. LEXIS 401 (Miss. 2012).

15. Entrapment.

Trial court did not err at defendant's trial for sale or transfer of a controlled substance by denying defendant's proffered jury instruction on the defense of entrapment because no rational jury could have found that defendant was induced by law-enforcement officers to commit a crime by selling prescription medication pills to the officers. The testimony of the officers provides ample evidence that defendant acted of defendant's own volition and was not induced into committing a crime. Hale v. State, 191 So. 3d 719, 2016 Miss. LEXIS 58 (Miss.), modified, — So. 3d —, 2016 Miss. LEXIS 205 (Miss. 2016).

Trial court did not err in disallowing testimony of defendant's bad childhood and relationship with her mother, as her defense of entrapment was whether she was predisposed to commit the crime and was induced by law enforcement to do so; defendant testified to everything that she claimed her mother would have testified, and the jury was able to hear the effect of the mother's illness on defendant, plus other testimony concerning an alleged grudge by one agent would have been irrelevant and confusing and misleading to the jury, plus that agent turned over the information to another agent, who made the decision to proceed with the buy. Pittman v. State, 987 So. 2d 1010, 2007 Miss. App. LEXIS 747 (Miss. Ct. App. 2007), cert. dismissed, 2008 Miss. LEXIS 368 (Miss. July 31, 2008).

Defendant did not make out prima facie case of entrapment so as to be entitled to instruction on entrapment defense in prosecution for selling crack cocaine, despite evidence that defendant would not have made sale of cocaine to law enforcement agent if agent had not approached him; defendant was asked to sell the substance and he was caught, and no one coerced or otherwise forced defendant to deliver substance to agent. Walls v. State, 672 So. 2d 1227, 1996 Miss. LEXIS 139 (Miss. 1996).

In a prosecution for delivery of marijuana and possession of marijuana with intent to distribute, the evidence was sufficient to support the jury's finding that the defendants were not entrapped, in spite of the defendants' argument that all of the marijuana involved in the case had been supplied by a confidential informant and that an undercover narcotics agent had induced one of the defendants to sell a portion of what the confidential informant had supplied, where the narcotics agent testified that he did not know of anyone associated with the State, including the confidential informant, who had furnished the marijuana to the defendants, and there was substantial circumstantial evidence of predisposition on the part of both defendants. Bosarge v. State, 594 So. 2d 1143, 1991 Miss. LEXIS 994 (Miss. 1991).

A defendant's testimony that a confidential informant, who was assisting law enforcement agencies in undercover investigations, had furnished the marijuana which the defendant later sold to an undercover police officer at the informant's request was sufficient to establish the defense of entrapment in a prosecution against the defendant for sale of marijuana. Pulliam v. State, 592 So. 2d 24, 1991 Miss. LEXIS 844 (Miss. 1991).

In a prosecution for sale of cocaine, the evidence was sufficient to support the jury's rejection of the defendant's defense of entrapment, even though the defendant offered 2 witnesses who said that they had seen the informant who purchased the cocaine from the defendant at the defendant's trailer several times during the week before the sale, where the defendant did not offer any witnesses who were present when the informant supposedly talked to the defendant. Bush v. State, 585 So. 2d 1262, 1991 Miss. LEXIS 589 (Miss. 1991).

A defendant who was convicted of the sale of cocaine was entitled to a new trial where a confidential informant had told the defendant that the informant owed a third party some money, that he could not go with his "cousin" (an undercover narcotics agent) to get some cocaine, but he would give the defendant $5 if he would go get it "for him and his cousin," the defendant took the undercover agent to the third party's house and went inside and purchased cocaine for the agent, and there was no evidence of whether the third party was acting on behalf of the narcotics agents. Since the defendant would be entitled to an acquittal on the ground of entrapment if the third party was assisting the narcotics agent, it was relevant for a jury to hear first hand evidence of whether the third party was or was not acting on behalf of the agents, and the State should have been required to provide such evidence. Daniels v. State, 569 So. 2d 1174, 1990 Miss. LEXIS 630 (Miss. 1990).

The State is not permitted to conduct a "supply-and-buy" sale of drugs, whereby a confidential informant supplies contraband to the defendant and an undercover narcotics agent then purchases the contraband from the defendant. Supply-and-buy has great potential for abuse. The accused is put in a position where he or she may only plead entrapment, where he or she must admit the underlying criminal act, deny a disposed (and subjective) state of mind and open up his or her entire life as the prosecution litigates predisposition, virtually assuring that the jury will never acquit the guilty and few, if any, of the innocent. Supply-and-buy strips the accused of important protections the law would otherwise afford him or her-that he or she stand trial for the offense charged in the indictment and for that alone. It thus vests in the Bureau of Narcotics great power to decide who is guilty and to set up its mark so that he or she is without practical chance for acquittal. This is not where the constitution puts the power to decide guilt or innocence. Moreover, the stratagem requires that prosecution agents practice deception en route to not one but 2 otherwise criminal acts-the supply and the buy. Tanner v. State, 566 So. 2d 1246, 1990 Miss. LEXIS 465 (Miss. 1990).

In a prosecution for sale of marijuana, the defendant made a prima facie case of entrapment and it was reversible error for the trial court to deny him an instruction on the entrapment defense where the defendant testified that he and the informant had been extremely close friends for several years, the informant called 15 or 20 times trying to persuade him to purchase some marijuana for a "friend" (an undercover agent), and that he made no profit from the drug transaction. Furthermore, the trial court erred in restricting the defendant in the development of his entrapment defense where, on numerous occasions, the defendant sought to question the undercover agent and the informant on matters that concerned either their credibility, bias, or interest in persuading the defendant to engage in an illegal drug transaction and the trial judge repeatedly sustained the State's objections to this line of questioning on the grounds that the questions concerned irrelevant or collateral matters. Avery v. State, 548 So. 2d 385, 1989 Miss. LEXIS 332 (Miss. 1989).

Where a defendant's testimony stands uncontradicted, undisputed, and unimpeached, even though the jury may not have believed the defendant, that testimony stands and makes out the defense. In such cases, prosecutors must have rebuttal evidence at hand to refute such testimony. Thus, in a prosecution for sale of marijuana, a defendant's motion for a directed verdict at the conclusion of all of the evidence in the case should have been granted where the defendant established the defense of entrapment by his own uncontradicted and unimpeached testimony. Gamble v. State, 543 So. 2d 184, 1989 Miss. LEXIS 252 (Miss. 1989).

A defendant accused of selling marijuana was entitled to have an entrapment instruction submitted to the jury based on his testimony that he had never made a sale of marijuana before, that he had no plans, intent or disposition to make such a sale, and that, had it not been for the importuning of the Bureau of Narcotics confidential informant, he would not have done so. King v. State, 530 So. 2d 1356, 1988 Miss. LEXIS 419 (Miss. 1988).

Adverse sale or reverse undercover operation, in which narcotics officers attempted to sell or furnish marijuana owned by the state to defendant and his colleagues, constituted entrapment, since the predisposition to commit the crime was instigated by the narcotics officers, and the defense of entrapment could be interposed to the charge of conspiracy to possess marijuana without the defendant taking the stand to testify. Barnes v. State, 493 So. 2d 313, 1986 Miss. LEXIS 2515 (Miss. 1986).

16. Jury instructions.

Trial court did not err at defendant's trial for sale or transfer of a controlled substance by denying defendant's proffered jury instruction on the defense of involuntary intoxication because defendant failed to provide a sufficient evidentiary basis to support his proffered instruction on involuntary intoxication and his theory of the case was covered by other instructions. Hale v. State, 191 So. 3d 719, 2016 Miss. LEXIS 58 (Miss.), modified, — So. 3d —, 2016 Miss. LEXIS 205 (Miss. 2016).

Trial court did not err in instructing the jury because the whole of the jury instructions properly informed the jury that the State had to prove each and every element of possession with intent to distribute beyond a reasonable doubt to obtain a conviction; the jury was informed that if the State failed to prove each and every element of possession with intent to distribute, then it had to acquit on that charge and consider the lesser offense. Wells v. State, 160 So. 3d 1136, 2015 Miss. LEXIS 85 (Miss.), overruled in part, Rowsey v. State, 188 So. 3d 486, 2015 Miss. LEXIS 573 (Miss. 2015).

Defendant was properly convicted for the sale of cocaine because defendant's claim that the elements instruction constructively amended the indictment was without merit. Miller v. State, 144 So. 3d 199, 2014 Miss. App. LEXIS 54 (Miss. Ct. App.), cert. denied, 145 So. 3d 674, 2014 Miss. LEXIS 402 (Miss. 2014).

Defendant was properly convicted for the sale of cocaine because the trial court did not abuse its discretion when it failed to give a cautionary instruction regarding a confidential informant's testimony. While the informant was not paid for the informant's testimony, the jury was made aware of the informant's cooperation with authorities in exchange for assistance from the district attorney on a charge against the informant, and the informant was also subject to cross-examination. Miller v. State, 144 So. 3d 199, 2014 Miss. App. LEXIS 54 (Miss. Ct. App.), cert. denied, 145 So. 3d 674, 2014 Miss. LEXIS 402 (Miss. 2014).

Jury was properly instructed on the elements of simple possession under Miss. Code Ann. § 41-29-139(c) because the instructions tracked the language of the simple-possession statute; the instructions were prepared by counsel for defendant. Campbell v. State, 118 So. 3d 598, 2012 Miss. App. LEXIS 608 (Miss. Ct. App. 2012), cert. denied, 117 So. 3d 330, 2013 Miss. LEXIS 377 (Miss. 2013).

Trial court properly gave a jury instruction on possession as a lesser included offense under Miss. Code Ann. § 41-29-139(c) as a possession offense was an offense necessarily committed along with the offense charged of possession with intent; there was no additional element of proof involved in a possession case versus a possession with intent case, and weight was in the statute for the purpose of sentencing options for the judge, not the jury. Gregory v. State, 96 So. 3d 54, 2012 Miss. App. LEXIS 485 (Miss. Ct. App. 2012).

Circuit court's jury instruction on the meaning and/or elements of the crime of possession of cocaine with the intent to distribute was adequate and should have been understood by a reasonable jury because the instruction contained all of the elements of the crime of possession of cocaine with the intent to distribute. Peterson v. State, 37 So. 3d 669, 2010 Miss. App. LEXIS 58 (Miss. Ct. App. 2010).

Defendant made no contemporaneous objection at trial to the prosecutor's question on voir dire, such that the issue was waived, but notwithstanding the procedural bar, the issue was without merit because the error, if any, was harmless; Miss. Unif. Cir. & County Ct. Prac. 3.07, cited by defendant, dealt with written jury instructions and was irrelevant to the issue, and assuming for the sake of argument that the prosecution impermissibly offered an opinion on the law, contrary to Miss. Unif. Cir. & County Ct. Prac. R. 3.05, any error was harmless because the prosecutor did not misstate the law and the jury was later properly instructed on the law of possession, in defendant's trial for possession of more than five kilograms of marijuana in Miss. Code Ann. § 41-29-139(c)(2)(G). Morales v. State, 990 So. 2d 273, 2008 Miss. App. LEXIS 542 (Miss. Ct. App. 2008).

Trial court's refusal to give a proposed instruction by defendant did not require reversal because its contents were covered fairly elsewhere in instructions given by the trial court; read as a whole, the instructions fairly announced the law and created no injustice in defendant's trial for possession of more than five kilograms of marijuana in Miss. Code Ann. § 41-29-139(c)(2)(G). Morales v. State, 990 So. 2d 273, 2008 Miss. App. LEXIS 542 (Miss. Ct. App. 2008).

Defendant was not entitled to a lesser-included offense instruction relating to possession simply based on the fact that she momentarily possessed crack cocaine before it was sold; there was no other evidence that would have supported a possession conviction. Spann v. State, 970 So. 2d 135, 2007 Miss. LEXIS 695 (Miss. 2007).

Defendant failed to establish entrapment as a matter of law; the trial court did not err in not submitting an entrapment as a matter of law instruction, given that the trial court found that the facts did not support defendant's claim that law enforcement acted outrageously, plus the court had previously found no entrapment as a matter of law in situations where law enforcement provided the money to the confidential informant to make a purchase, and the court was not persuaded by defendant's claim that her situation was similar to a "reverse sale." Pittman v. State, 987 So. 2d 1010, 2007 Miss. App. LEXIS 747 (Miss. Ct. App. 2007), cert. dismissed, 2008 Miss. LEXIS 368 (Miss. July 31, 2008).

Defendant who was found guilty of attempted manufacture of methamphetamine under Miss. Code Ann. § 41-29-313(1)(c) did not show that counsel was deficient in failing to request a jury instruction on possession of precursor chemicals under Miss. Code Ann. § 41-29-139(b)(1) because the two offenses carried the same penalty. Myhand v. State, 981 So. 2d 988, 2007 Miss. App. LEXIS 544 (Miss. Ct. App. 2007), cert. denied, 981 So. 2d 298, 2008 Miss. LEXIS 225 (Miss. 2008).

In a case involving cocaine possession under Miss. Code Ann. § 41-29-139(c)(1)(B), jury instructions given regarding the presumption of possession against defendant as the owner of a vehicle were not erroneous because it was for the jury to decide if defendant was the actual owner of such where title had not been transferred; moreover, when reading the instructions given as a whole, they contained language requiring proof that defendant had "intentional and conscious" control over the illegal substances. Bates v. State, 952 So. 2d 320, 2007 Miss. App. LEXIS 169 (Miss. Ct. App. 2007).

Elements for the charge of sale of cocaine as listed in Miss. Code Ann. § 41-29-139 were necessarily included to prove the crime of sale of cocaine while in possession of a firearm under Miss. Code Ann. § 41-29-152, as § 41-29-152 simply provided for an enhanced penalty for the commission of a crime under § 41-29-139, but it was still necessary that each element of the charged offense under § 41-29-139 be proven; the jury was properly instructed that defendant could be found guilty of sale of cocaine, a lesser-included offense to the charge of sale of cocaine while in possession of a firearm, and thus pursuant to Miss. Code Ann. § 99-19-5(1), there was no merit to the argument that the indictment against was not valid because a lesser-included offense was not stated. Davis v. State, 950 So. 2d 1073, 2007 Miss. App. LEXIS 125 (Miss. Ct. App. 2007).

Defendant argued it was plain error for the trial court to have granted the subject instruction because its language did not include the word "sell" for which he was indicted and later convicted. Instead, the words "transferred or delivered" were included; his substantial rights were not affected and his argument was without merit as Miss. Code Ann. § 41-29-139(a)(1) enumerated several offenses including, to sell, barter, transfer, or possess a controlled substance, the indictment noted that the criminal charge he faced was the "sale or transfer" of a controlled substance, and the scope of the jury instruction in question was not broader than the indictment. Kelly v. State, 910 So. 2d 535, 2005 Miss. LEXIS 128 (Miss. 2005).

In defendant's trial for sale of cocaine, trial court did not err in failing to instruct on all elements upon the face of the indictment. First, defendant failed to timely object; second, Miss. Code Ann. § 41-29-139 only required a person to either knowingly or intentionally sell a controlled substance. Steen v. State, 873 So. 2d 155, 2004 Miss. App. LEXIS 435 (Miss. Ct. App. 2004).

Where defendant charged with selling cocaine claimed to have sold fake and not real cocaine to undercover officer and offered video of officer complaining about the fake, trial court improperly refused to instruct jury on lesser non-included offense of selling fake cocaine under Miss. Code Ann. § 41-29-146(1). Green v. State, 884 So. 2d 733, 2004 Miss. LEXIS 714 (Miss. 2004).

Because proof of defendant's guilt of the elements for sale of a controlled substance in violation of Miss. Code Ann. § 41-29-139 would not constitute proof of the elements of false representation in violation of Miss. Code Ann. § 41-29-146, a lesser-included offense jury instruction was not justified. Green v. State, 856 So. 2d 396, 2003 Miss. App. LEXIS 233 (Miss. Ct. App. 2003), rev'd, in part, 884 So. 2d 733, 2004 Miss. LEXIS 714 (Miss. 2004).

In a case where defendant failed to preserve error regarding a lesser, non-included offense jury instruction, because the laboratory results indicating that the substance defendant sold to the undercover officer was cocaine, the absence of the instruction was not such a significant matter as to rise to the level of plain error. Green v. State, 856 So. 2d 396, 2003 Miss. App. LEXIS 233 (Miss. Ct. App. 2003), rev'd, in part, 884 So. 2d 733, 2004 Miss. LEXIS 714 (Miss. 2004).

Although delivery was not specifically enumerated as a crime in Miss. Code Ann. § 41-29-139(a)(1), the word delivery was equated with transfer or distribute, and delivery of cocaine was to be considered a separate offense of the same magnitude as selling cocaine; thus a jury instruction was given in error as appellant's indictment charged her only with the sale of cocaine, but a granted jury instruction was more extensive and a deviation from the charge in the indictment, using the words sell, barter, or otherwise dispense or deliver. Mitchell v. State, 788 So. 2d 853, 2001 Miss. App. LEXIS 236 (Miss. Ct. App. 2001).

Defendant convicted of possessing methamphetamine waived appellate review of his claim that trial court erred by refusing his instruction which correctly spoke to jury's need to find that defendant was "beyond a reasonable doubt," "aware of the presence and character of the particular substance and was intentionally and consciously in possession of it"; defense counsel refused to delete portions of that proposed instruction that trial court found offending and superfluous, and defendant, without objection, refused to submit amended version upon trial court's request. Townsend v. State, 681 So. 2d 497, 1996 Miss. LEXIS 414 (Miss. 1996).

Jury instruction stating that where person is occupying and exercising control over automobile, he is presumed to be in possession of contents (i.e., drugs found therein) of automobile, was, standing alone, incorrect statement of law concerning constructive possession, for purposes of prosecution for possession of methamphetamine; however, coupled with instruction that spoke to "conscious control" over illegal substance, there was no error looking at jury instructions as whole. Townsend v. State, 681 So. 2d 497, 1996 Miss. LEXIS 414 (Miss. 1996).

Defendant's requested instruction regarding his theory of the case, which was that he did not participate in drug transaction but rather was used as decoy, was adequately covered by instructions precluding jury from finding defendant guilty unless it determined that defendant participated in the transaction, and thus, defendant was not entitled to requested instruction. Triplett v. State, 672 So. 2d 1184, 1996 Miss. LEXIS 77 (Miss. 1996).

Case against defendant was not based entirely on circumstantial evidence, and thus, "2-theory" instruction was not required in defendant's prosecution for cocaine possession, where motel room in which cocaine was found was registered in name of defendant alone and only one key had been issued to its occupant, and defendant's own testimony placed cocaine inside motel room. Petti v. State, 666 So. 2d 754, 1995 Miss. LEXIS 587 (Miss. 1995).

In a prosecution for sale of a controlled substance, the mere fact that one must possess a controlled substance before he or she can sell it is not enough to require a lesser included offense instruction on possession of a controlled substance. Reynolds v. State, 658 So. 2d 852, 1995 Miss. LEXIS 335 (Miss. 1995).

In a prosecution for sale of cocaine, the trial court committed reversible error by deleting a portion of an alibi instruction stating that the "defendant is not required to establish the truth of the alibi to your satisfaction," since the omitted language was an essential part of the instruction, and the deleted language was not and could not be covered by general instructions on the presumption of innocence. Jackson v. State, 645 So. 2d 921, 1994 Miss. LEXIS 535 (Miss. 1994).

In a prosecution for possession of marijuana with intent to sell, the trial court erred in refusing to give a lesser included offense instruction which would have allowed the jury to find the defendant guilty of simple possession of marijuana, even though the defendant's alleged accomplice testified that they intended to sell the marijuana, where the defendant was an admitted marijuana user and the amount of marijuana found was not so large as to preclude the purpose of personal use, since the jury was free to disregard the alleged accomplice's testimony that the marijuana was for sale. Perry v. State, 637 So. 2d 871, 1994 Miss. LEXIS 283 (Miss. 1994).

In a prosecution for possession of marijuana with intent to sell, the defendant was not entitled to a circumstantial evidence instruction requiring the prosecution to prove beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis other than that of guilt, his intent to sell marijuana, since no instruction on circumstantial evidence is necessary where intent alone is sought to be proved by circumstantial evidence. Jones v. State, 635 So. 2d 884, 1994 Miss. LEXIS 202 (Miss. 1994).

In a prosecution for the sale of cocaine, the trial court did not err in refusing an instruction stating that even if the jury "strongly believe[d]" that the defendant committed the offense, he must be found not guilty if the State failed to prove beyond a reasonable doubt that he sold cocaine. Moore v. State, 631 So. 2d 805, 1994 Miss. LEXIS 73 (Miss. 1994).

When the prosecution bases its case solely on the testimony of an accomplice corroborated only by a confidential informant, it is mandatory that the trial judge grant a cautionary instruction regarding the testimony of the accomplice; thus, a conviction for sale of cocaine would be reversed for failure to grant a cautionary instruction regarding an accomplice's testimony where the State's only corroborating witness was a confidential informant. Edwards v. State, 630 So. 2d 343, 1994 Miss. LEXIS 7 (Miss. 1994).

The rule that a defendant must admit the offense with which he or she is charged before being permitted to submit an entrapment instruction to the jury would be abolished; even if the defendant denies one or more of the elements of the crime, he or she is entitled to an instruction on the defense of entrapment whenever there is sufficient evidence from which a reasonable jury could find entrapment. Hopson v. State, 625 So. 2d 395, 1993 Miss. LEXIS 422 (Miss. 1993).

In a prosecution for possession of cocaine, the trial court properly refused to grant the "two-theory" circumstantial evidence instruction requested by the defendant since there was direct evidence of actual possession where a police officer testified that he saw the defendant throw a plastic bag to the ground, and a plastic bag containing cocaine was immediately seized in an area close to the defendant. Givens v. State, 618 So. 2d 1313, 1993 Miss. LEXIS 221 (Miss. 1993).

In a prosecution for possession of marijuana with intent to sell, the circuit court's acceptance of its own 2 proposed instructions and the 4 instructions proposed by the prosecution, and its refusal of 9 of the defendant's 10 requested instructions, did not constitute reversible error where the judge refused the defendant's proposed instructions because they were "repetitious" of those which had already been accepted. Hemphill v. State, 566 So. 2d 207, 1990 Miss. LEXIS 460 (Miss. 1990).

On trial of felony charge of conspiring to distribute more than one kilogram of marijuana, giving of instructions which would allow the jury to find defendants guilty based on acts in furtherance of the conspiracy without requiring a separate finding that they knowingly became a part of the agreement to commit the crime, while erroneous, did not require reversal, where defendants failed to object, and the deficiency of the instructions was cured by other instructions given. Gray v. State, 487 So. 2d 1304, 1986 Miss. LEXIS 2441 (Miss. 1986).

17. Sentence.

Because the sentencing recommendations by the State were reasonable, the trial court did not err in deciding not to reduce defendant's sentence under this section. Jackson v. State, — So. 3d —, 2018 Miss. App. LEXIS 329 (Miss. Ct. App. July 17, 2018).

It was error to base defendant's habitual offender sentence on a conviction for possession of alprazolam because that crime was a misdemeanor. Pinter v. State, 221 So. 3d 378, 2017 Miss. App. LEXIS 337 (Miss. Ct. App. 2017).

Defendant's sentence did not exceed the maximum permitted by law because defendant's indictment for possession of less than one-tenth of one gram of cocaine as a felony was amended to reflect defendant's status as a habitual offender and subsequent drug offender for sentencing purposes in the event defendant was convicted. Therefore, because defendant was convicted as a habitual and subsequent offender, the court sentenced defendant to the statutorily required sentence of imprisonment. Parker v. State, 208 So. 3d 19, 2017 Miss. App. LEXIS 12 (Miss. Ct. App. 2017).

Review of defendant's Miss. Code Ann. § 41-29-147 subsequent drug offender sentence was procedurally barred because (1) defendant did not object at sentencing, and (2) defendant's sentence was less than the statutory maximum, so the sentence was not illegal. Carver v. State, 227 So. 3d 1149, 2016 Miss. App. LEXIS 698 (Miss. Ct. App. 2016), rev'd, 227 So. 3d 1090, 2017 Miss. LEXIS 415 (Miss. 2017).

Trial court did not abuse its discretion in sentencing defendant as an habitual offender to thirty years for possession of cocaine with intent to distribute because it was the maximum prison penalty at the time of his original sentence; defendant's original sentence was imposed when the maximum sentence prescribed for the crime was thirty years, and the statute that lowered the maximum penalty did not take effect until more than five years after the initial sentence Wells v. State, 202 So. 3d 1230, 2016 Miss. LEXIS 445 (Miss. 2016).

Defendant's sentence was not illegal because, although it exceeded the new statutory maximum term as set by recent amendments to the statutory sentencing scheme, the sentence was legal under the statutory sentencing scheme in effect at the time of defendant's crime and sentencing. Morgan v. State, 193 So. 3d 703, 2016 Miss. App. LEXIS 385 (Miss. Ct. App. 2016).

When the statute under which defendant was sentenced was amended, the amendment did not entitle defendant to the post-conviction relief of being resentenced under the amended statute because (1) the sentence had become final when the statute was amended, (2) for a sentencing statute to be retroactive, the statute had to so state, and this statute did not, and (3) Miss. Code Ann. § 99-19-33 had no bearing, since defendant's conviction became final before the statute was amended. Barnett-Phillips v. State, 195 So. 3d 226, 2016 Miss. App. LEXIS 377 (Miss. Ct. App. 2016).

Under this section, a first-time offender may be imprisoned for up to five years. Because defendant was a subsequent drug offender, the trial judge was allowed to sentence defendant to a term up to twice that otherwise authorized and, therefore, defendant's 10-year, day-for-day sentence was not unlawful. Gardner v. State, 178 So. 3d 714, 2015 Miss. LEXIS 469 (Miss. 2015).

Defendant's 30-year sentence for possession of more than 40 dosage units of benzylpiperazine was not excessive and did not constitute cruel and unusual punishment, as it was within the statutory limits of this section. Varnado v. State, 201 So. 3d 483, 2015 Miss. App. LEXIS 529 (Miss. Ct. App. 2015), cert. denied, 203 So. 3d 1133, 2016 Miss. LEXIS 429 (Miss. 2016).

Inmate's sentence did not violate Miss. Code Ann. § 47-7-34 where: (1) the inmate was sentenced to the maximum sentence for possession-of-cocaine of 16 years' under Miss. Code Ann. § 41-29-139(c)(1)(C); (2) the inmate was sentenced to the maximum sentence for child-endangerment of 10 years' under Miss. Code Ann. § 97-5-39(2)(b)(i); (3) 11 years of the 26-year sentence were suspended, leaving 15 years to serve; and (4) when the 5 years of post-release supervision were added to the 15 years to serve, the total was less than the maximum authorized sentence. Ivy v. State, 103 So. 3d 766, 2012 Miss. App. LEXIS 800 (Miss. Ct. App. 2012), cert. dismissed, 119 So. 3d 328, 2013 Miss. LEXIS 397 (Miss. 2013).

Trial court did not err in denying defendant's motion for post-conviction relief because defendant was sentenced for selling a controlled substance in accordance with the proper statutory provisions; defendant pleaded guilty to violating Miss. Code Ann. § 41-29-139 and was sentenced for the "sale," not "possession," of the controlled substance, and the trial court sentenced defendant as a subsequent drug offender under Miss. Code Ann. § 41-29-147, and not as a habitual offender, in conformity with his plea negotiations. Whatley v. State, 123 So. 3d 461, 2013 Miss. App. LEXIS 28 (Miss. Ct. App.), cert. denied, 123 So. 3d 450, 2013 Miss. LEXIS 530 (Miss. 2013).

Defendant's 126-year sentence for selling cocaine, methamphetamine, and marijuana was not disproportionate to the crimes because the sentence was statutorily authorized, as (1) Miss. Code Ann. § 41-29-139(b)(1) and (3) permitted maximum sentences of 30 years and 3 years, (2) Miss. Code Ann. § 99-19-81 required a maximum sentence, as defendant was convicted of a third felony, (3) the doubling of each maximum sentence was authorized by Miss. Code Ann. § 41-29-147, based on defendant's prior drug conviction, and (4) Miss. Code Ann. § 99-19-21 authorized the court to order that the sentences run consecutively. Mosley v. State, 104 So. 3d 839, 2012 Miss. LEXIS 465 (Miss. 2012).

After pleading guilty to two counts of selling less than 30 grams of marijuana, Miss. Code Ann. § 41-29-139(b)(3), and receiving a nine-year sentence, an inmate's post-conviction relief motion, claiming the sentence constituted cruel and unusual punishment, was properly dismissed because although the maximum sentence for each count was three years, the inmate was subject to enhanced punishment as a subsequent offender, pursuant to Miss. Code Ann. § 41-29-147, and as a habitual offender, pursuant to Miss. Code Ann. § 99-19-81; the sentence did not exceed the statutory maximum. Wooten v. State, 73 So. 3d 547, 2011 Miss. App. LEXIS 334 (Miss. Ct. App. 2011).

State failed to prove defendant's sale of cocaine to a confidential informant occurred within 1,500 feet of a public park because the record contained no evidence establishing that the real property where the sale occurred was in fact a public park; however, the State's failure had no effect on defendant's sentence because the trial judge did not use park proximity to increase defendant's penalty beyond the statutory maximum, but rather, the determining sentencing factor was defendant's forty-two prior misdemeanor convictions, and defendant's sentence was well below the general statutory maximum of thirty years listed in Miss. Code Ann. § 41-29-139(b)(1). Pearson v. State, 64 So. 3d 569, 2011 Miss. App. LEXIS 261 (Miss. Ct. App. 2011).

Trial court did not err in denying appellant's petition for post-conviction relief because appellant sentence and fine for the sale of marijuana under Miss. Code Ann. § 41-29-139 did not violate the statutory maximum and was not illegal; the trial court had no discretion due to the effect of Miss. Code Ann. § 99-19-81, and accordingly, appellant received the maximum sentence and fine for the offense without eligibility for parole or probation under § 99-19-81, and the sentence was doubled under the Uniform Controlled Substances Act, Miss. Code Ann. § 41-29-147. Miller v. State, 61 So. 3d 944, 2011 Miss. App. LEXIS 75 (Miss. Ct. App. 2011).

Denial of post-conviction relief to an inmate was error as under Miss. Code Ann. § 47-7-34, the circuit court had lacked jurisdiction to extend the inmate's term of post-release supervision (PRS) beyond the three-year maximum authorized by Miss. Code Ann. § 41-29-139(b)(3), and therefore, the inmate's PRS had expired before the circuit court revoked the inmate's suspended sentence for violation of the terms of the extended PRS. Allen v. State, 62 So. 3d 450, 2011 Miss. App. LEXIS 87 (Miss. Ct. App. 2011).

Although appellant's sentence was a violation of Miss. Code Ann. § 47-5-1003(1), this did not constitute reversible error; appellant did not suffer any prejudice by the imposition of house arrest and where a defendant is given an illegal sentence that is more favorable than what the legal sentence would have been, he/she is not later entitled to relief through a post-conviction action. Graham v. State, 2010 Miss. App. LEXIS 116 (Miss. Ct. App. Mar. 9, 2010), op. withdrawn, sub. op., 85 So. 3d 860, 2011 Miss. App. LEXIS 33 (Miss. Ct. App. 2011).

Circuit court sentenced appellant to eight years, which clearly was within the statutory authority; although appellant claimed she was a first-time offender, she was previously charged three times for driving under the influence and she was addicted to marijuana and alcohol. Field v. State, 28 So. 3d 697, 2010 Miss. App. LEXIS 101 (Miss. Ct. App. 2010).

Appellant inmate's sentence did not fail to comply with Miss. Code Ann. § 47-7-34, because he was sentenced to twenty years, which was well within the statutory guidelines for possession with intent to distribute, and his term of incarceration plus his post-release supervision did not exceed the maximum sentence of thirty years as prescribed by Miss. Code Ann. § 41-29-139(b)(1). Burks v. State, 37 So. 3d 1219, 2010 Miss. App. LEXIS 26 (Miss. Ct. App. 2010).

Appellant inmate's sentence did not fail to comply with Miss. Code Ann. § 47-7-34, because he was sentenced to twenty years, which was well within the statutory guidelines for possession with intent to distribute, and his term of incarceration plus his post-release supervision did not exceed the maximum sentence of thirty years as prescribed by Miss. Code Ann. § 41-29-139(b)(1). Burks v. State, 37 So. 3d 1219, 2010 Miss. App. LEXIS 26 (Miss. Ct. App. 2010).

After conviction on a charge of possession of cocaine in an amount greater than thirty grams, within 1,500 feet of a church, with intent to distribute, defendant's postconviction review motion was correctly denied because no conflict existed between the circuit court's oral pronouncement of the sentence and its written order. Both clearly reflected that defendant was sentenced to a term of 30 years, followed by five years of post-release supervision, for violating Miss. Code Ann. §§ 41-29-139 and 41-29-142. Chandler v. State, 27 So. 3d 1199, 2010 Miss. App. LEXIS 9 (Miss. Ct. App. 2010).

In a case in which defendant's conviction for possession of approximately 2.37 grams of cocaine was his second drug offense, pursuant to Miss. Code Ann. § 41-29-147, he was subject to twice the maximum sentence of 30 years set forth in Miss. Code Ann. § 41-29-139(b)(1), and as a habitual offender, he was also subject to an additional enhanced penalty under Miss. Code Ann. § 99-19-83, which called for a mandatory life sentence, his life sentence was not disproportionate to the crime and did not constitute cruel and unusual punishment. Clay v. State, 20 So. 3d 743, 2009 Miss. App. LEXIS 696 (Miss. Ct. App. 2009).

In a post-conviction proceeding in which defendant's habitual offender status was changed to reflect the sentence enhancement under Miss. Code Ann. § 41-29-147 for being a second or subsequent offender, defendant argued unsuccessfully that his 16-year sentence with 12 years to serve and four years suspended on post-release supervision, and $3,000 in fines was erroneously enhanced based on a prior misdemeanor offense. The State showed that he had a prior misdemeanor drug conviction, the applicable sentencing range for defendant's second offense was between a minimum of four years and a maximum of 16 years with a fine of up to $100,000, and § 41-29-147 allowed the doubling of his sentence for a prior misdemeanor drug conviction. Burris v. State, 18 So. 3d 321, 2009 Miss. App. LEXIS 633 (Miss. Ct. App. 2009).

Defendant was entitled to resentencing after being convicted of possession of at least 10 grams, but less than 30 grams, of cocaine within 1,500 feet of a playground because although defendant was indicted pursuant to Miss. Code Ann. § 41-29-139(a)(1), the jury found defendant guilty under § 41-29-139(c)(1)(D); there was no sentence enhancement provision for crimes committed under that particular statute, regardless of whether the crime occurred within 1,500 feet of a school or park. Daniels v. State, 9 So. 3d 1194, 2009 Miss. App. LEXIS 252 (Miss. Ct. App. 2009).

Where appellant was convicted of selling a Schedule II controlled substance in violation of Miss. Code Ann. § 41-29-139, he had two previous felony convictions for grand larceny and the sale of a Schedule IV controlled substance. The circuit court determined he was eligible for enhanced sentencing as a habitual offender under Miss. Code Ann. §§ 99-19-81, 41-29-147 and sentenced him to thirty years in custody without parole. Lacey v. State, 29 So. 3d 786, 2009 Miss. App. LEXIS 305 (Miss. Ct. App. 2009), cert. denied, 2010 Miss. LEXIS 136 (Miss. Mar. 11, 2010).

Because defendant's 15-year sentence for selling cocaine was within statutory limits and was consistent with the jury's verdict, the court rejected defendant's contention that his counsel was ineffective for failing to object to the sentence. Thames v. State, 5 So. 3d 1178, 2009 Miss. App. LEXIS 170 (Miss. Ct. App. 2009).

Defendant's life sentence without parole for possession of less than 0.10 gram of cocaine in violation of Miss. Code Ann. § 41-29-139(c)(1)(A) was mandatory under the circumstances and did not arise solely from his conviction of possession of cocaine but based on his status as a habitual offender under Miss. Code Ann. § 99-19-83. Furthermore, defendant's claim was procedurally barred because he did not address all three factors of the proportionality analysis. Hudson v. State, 31 So. 3d 1, 2009 Miss. App. LEXIS 58 (Miss. Ct. App. 2009), rev'd, 30 So. 3d 1199, 2010 Miss. LEXIS 160 (Miss. 2010).

Based upon defendant's plea, the trial court had the authority to sentence defendant up to sixty years in the custody of the Mississippi Department of Corrections (MDOC); the trial court sentenced defendant to fifteen years in the custody of the MDOC, with six years to serve, and the remaining nine years suspended, and as such, defendant's sentence was within the minimum and maximum sentences set forth by statute. Sanchez v. State, 2 So. 3d 780, 2009 Miss. App. LEXIS 65 (Miss. Ct. App. 2009).

Although a conviction for the sale of a controlled substance, under Miss. Code Ann. § 41-29-139, was affirmed, defendant's rights under the Sixth Amendment were violated because he did not receive a jury hearing on the issue of a thirty-year sentence enhancement, pursuant to Miss. Code Ann. § 41-29-142, for selling a controlled substance within 1,500 feet of a church. Brown v. State, 995 So. 2d 698, 2008 Miss. LEXIS 586 (Miss. 2008).

Defendant's sentence after he was convicted of the possession of cocaine, more then 10 grams, but less than 30 grams, in violation of Miss. Code Ann. § 41-29-139(c)(1)(D), was proper because, although his sentenced might have seemed harsh in light of sentences received by others convicted of drug possession, his sentence fit within the statutory maximum and harsher sentences had been upheld for drug possession. Williams v. State, 5 So. 3d 496, 2008 Miss. App. LEXIS 639 (Miss. Ct. App. 2008), cert. denied, 11 So. 3d 1250, 2009 Miss. LEXIS 135 (Miss. 2009).

Because defendant's sentence of 60 years with 47 years to serve in the custody of Mississippi Department of Corrections fell within the statutory limits, as it was enhanced for his possession of a firearm while he possessed a Schedule II controlled substance, no further analysis under Solem was required and it was affirmed on appeal. Barlow v. State, 8 So. 3d 196, 2008 Miss. App. LEXIS 471 (Miss. Ct. App. 2008), cert. denied, 11 So. 3d 1250, 2009 Miss. LEXIS 204 (Miss. 2009).

Defendant's life sentence for possession of cocaine and possession of marijuana was not cruel and unusual punishment because he met the requirements of the habitual offender statute under Miss. Code Ann. § 99-19-83 in that he was also convicted of two separate prior felonies, one of which was a violent crime, and he served more than a year for each. Jenkins v. State, 997 So. 2d 207, 2008 Miss. App. LEXIS 460 (Miss. Ct. App. 2008).

Trial court properly denied defendant's motion for post-conviction relief after defendant pled guilty to the sale of cocaine where Miss. Unif. Cir. & County Ct. Prac. R. 8.04(A)(4) did not require that the trial judge inform defendant that defendant had the right to appeal the sentence; in any event, defendant's eight-year sentence was well below the 30-year maximum sentence for the sale of cocaine under Miss. Code Ann. § 41-29-139(b)(1). Coleman v. State, 979 So. 2d 731, 2008 Miss. App. LEXIS 196 (Miss. Ct. App. 2008).

Appellant's sentence was not grounds for post-conviction relief because appellant's sentence fell well within the statutory limits for the sale of cocaine, under Miss. Code Ann. § 41-29-139(b)(1), because appellant received a lenient sentence of only fifteen years on each count, with five years suspended on each count, and he was fined $5,000 for each count, which was all suspended except for $1,000 plus court costs. Miller v. State, 973 So. 2d 319, 2008 Miss. App. LEXIS 45 (Miss. Ct. App.), cert. dismissed, 981 So. 2d 298, 2008 Miss. LEXIS 218 (Miss. 2008).

Where appellant was convicted of the unlawful sale of cocaine, the trial court denied his motion to reconsider his thirty-year sentence imposed under Miss. Code Ann. § 41-29-139(b)(1). No first-time offender exception was available, because appellant was charged with selling cocaine. Alexander v. State, 979 So. 2d 716, 2007 Miss. App. LEXIS 755 (Miss. Ct. App. 2007).

Circuit court was within its discretion in sentencing a defendant who pleaded guilty to the sale of cocaine under Miss. Code Ann. § 41-29-139 to 12 years instead of 8 years, as the State had recommended, because 12 years was within the statutory range and the defendant showed disrespect to the court by appearing late and intoxicated at sentencing. Smith v. State, 973 So. 2d 1003, 2007 Miss. App. LEXIS 728 (Miss. Ct. App. 2007).

In a sale of cocaine case, defendant's 60-year sentence was not excessive because it was well within the statutorily proscribed limits, the trial judge noted that defendant had sold cocaine to a buyer over 100 times, and the gas station at which defendant sold cocaine was within walking distance of a school. Phinizee v. State, 983 So. 2d 322, 2007 Miss. App. LEXIS 631 (Miss. Ct. App. 2007).

Defendant who pleaded guilty to the sale of cocaine under Miss. Code Ann. § 41-29-139(b) and was sentenced to 30 years' imprisonment was not subject to an excessive sentence because that allegation was founded on his mistaken belief that he should have been sentenced for mere possession of cocaine under Miss. Code Ann. § 41-29-139(c). Morgan v. State, 966 So. 2d 204, 2007 Miss. App. LEXIS 545 (Miss. Ct. App. 2007).

Where a grand jury indicted appellant for the crime of selling methamphetamine in violation of Miss. Code Ann. § 41-29-139(a)(1), appellant entered a plea of guilty to this charge; where appellant was sentenced to 30 years imprisonment, with 20 years suspended, leaving ten years to serve, he was not entitled to post-conviction relief. Carroll v. State, 963 So. 2d 44, 2007 Miss. App. LEXIS 532 (Miss. Ct. App. 2007).

Where appellant entered a guilty plea to possession of cocaine with intent and possession of cocaine in violation of Miss. Code Ann. § 41-29-139, the offenses were not included on the list of offenses not eligible for the intensive supervision and house arrest program under Miss. Code Ann. § 47-5-1003; the trial court's imposition of a 25-year sentence in intensive supervision was not an illegal sentence. Moore v. State, 976 So. 2d 930, 2007 Miss. App. LEXIS 486 (Miss. Ct. App. 2007), cert. dismissed, 977 So. 2d 343, 2008 Miss. LEXIS 114 (Miss. 2008).

Petition for postconviction relief was denied because there was no Eighth Amendment violation based on a 14-year sentence given for a violation of Miss. Code Ann. § 41-29-139 where the maximum sentence was 30 years; there was no inferences of a grossly disproportionate sentence when defendant's sentence was compared to the crime that he committed, and the factors in Solem v. Helm, 463 U.S. 277 (1983), were not considered because no evidence was presented to require such. Moody v. State, 964 So. 2d 564, 2007 Miss. App. LEXIS 429 (Miss. Ct. App. 2007).

Defendant had not established that he received ineffective assistance of counsel when counsel advised defendant to plead guilty so that the state would recommend a sentence of 12 years' imprisonment for the sale of cocaine, because counsel properly advised defendant that the potential sentence for the sale of a controlled substance was zero to 30 years under Miss. Code Ann. § 41-29-139; counsel was not required to advise defendant of the eight-year maximum sentence set forth in § 41-29-139(c)(1)(B) because that sentence pertained only to the possession of a controlled substance, not to the sale of it. Dunlap v. State, 956 So. 2d 1088, 2007 Miss. App. LEXIS 348 (Miss. Ct. App. 2007).

Motion for post-conviction relief was properly denied in a case where defendant pled guilty to the sale of cocaine under Miss. Code Ann. § 41-29-139(a) since his 20-year sentence was not illegal; because he was a habitual offender, defendant should have actually received a mandatory 30-year sentence. Rucker v. State, 955 So. 2d 958, 2007 Miss. App. LEXIS 284 (Miss. Ct. App. 2007).

Where appellant pled guilty to the manufacture of methamphetamine, he was sentenced to 22 years as permitted by Miss. Code Ann. § 41-29-139(b)(1); the post-conviction court found that the sentence was not disproportionate to the crime and correctly dismissed his petition without a hearing. Sellars v. State, 963 So. 2d 1183, 2007 Miss. App. LEXIS 254 (Miss. Ct. App. 2007).

Defendant faced a possible 30-year sentence for the sale of cocaine, and his sentence of 20 years with ten suspended and five years post-release supervision was within the zero- to 30-year limits of the statute; thus, his sentence was within the discretion of the trial court. Westbrook v. State, 953 So. 2d 286, 2007 Miss. App. LEXIS 199 (Miss. Ct. App.), cert. dismissed, 962 So. 2d 38, 2007 Miss. LEXIS 436 (Miss. 2007).

Defendant's sentence after being convicted of the sale of marijuana within a correctional facility was appropriate because the maximum fine and the minimum sentence that he received were both within the statutory limits of Miss. Code Ann. § 47-5-198(3); it was clear that the circuit court was more than lenient in imposing house arrest against defendant because he benefited through what appeared to have been legislative oversight as well as significant judicial restraint because, if he had been convicted of merely selling controlled substances, he could not have been sentenced to house arrest. Jackson v. State, 962 So. 2d 649, 2007 Miss. App. LEXIS 104 (Miss. Ct. App.), cert. denied, 962 So. 2d 38, 2007 Miss. LEXIS 434 (Miss. 2007).

In a case involving the sale of cocaine, defendant's rights under Miss. Const. Art. 3, §§ 14, 26, 28 and U.S. Const. Amends. 5, 6, 8, and 14 were not violated by the maximum 30-year sentence; the sentence imposed was within the statutory limitation and was within the sound discretion of the trial judge. Johnson v. State, 950 So. 2d 178, 2007 Miss. LEXIS 125 (Miss. 2007).

Due to the fact that defendant had pled guilty to charges relating to the sale of methamphetamine, he was not eligible for parole since that crime was excepted from Miss. Code Ann. § 47-7-3; therefore, a motion for post-conviction relief was properly denied. Heafner v. State, 947 So. 2d 354, 2007 Miss. App. LEXIS 17 (Miss. Ct. App. 2007).

Defendant convicted of selling cocaine was sentenced to twenty-five years in prison with five years suspended. Because defendant's sentence was within the statutory guidelines, the sentence was not grossly disproportionate to the crime. Williams v. State, 936 So. 2d 387, 2006 Miss. App. LEXIS 197 (Miss. Ct. App. 2006).

Petition for post-conviction relief was procedurally barred due to being filed five years after a guilty plea because the intervening case of Blakely v. Washington, 542 U.S. 296, 159 L. Ed. 2d 403 (2004) did not apply since the sentence imposed was within the range allowed. Glenn v. State, 940 So. 2d 969, 2006 Miss. App. LEXIS 779 (Miss. Ct. App. 2006).

Three different statutory enhancements were properly used in sentencing defendant to 32 years' imprisonment for cocaine possession while possessing a firearm and firearm possession by a convicted felon; because he had been twice previously convicted of felonies, and sentenced to separate terms of at least one year, the maximum base term of imprisonment for possession, eight years under Miss. Code Ann. § 41-29-139(c)(1)(B), Miss. Code Ann. § 99-19-81, applied; because he also possessed a firearm, that sentence was doubled to 16 years, and because he had been previously convicted of a drug offense, the trial judge doubled the sentence again to arrive at a 32-year sentence. Mosley v. State, 930 So. 2d 459, 2006 Miss. App. LEXIS 401 (Miss. Ct. App. 2006).

Appellate court overruled the petitioner's argument that his twenty-five year sentence for possession of marihuana with intent to sell was disproportionate because the petitioner had other drug charges pending against him; thus, he did not fit the definition of a first offender, and the petitioner was indicted for possession of more than a kilogram but less than five kilos of marihuana, and he potentially could have received up to a thirty year sentence. White v. State, 921 So. 2d 402, 2006 Miss. App. LEXIS 113 (Miss. Ct. App. 2006).

Defendant's enhanced sentence of 60 years, a two million dollar fine, and fifty dollars in restitution, pursuant to Miss. Code Ann. § 41-29-152, for possession of methamphetamine with intent to distribute and possession of a firearm while intending to distribute, was not disproportionate to the crime committed and did not amount to cruel and unusual punishment in violation of the Eighth Amendment because his sentence did not exceed the statutory limits. Even though defendant was a first time offender and possessed a small amount of methamphetamine, the trial judge had discretion under Miss. Code Ann. § 41-29-149 to reduce the statutory sentence for first time offenders; however, the trial court was not required to take into account the first time offender status when sentencing. Passman v. State, 937 So. 2d 17, 2006 Miss. App. LEXIS 89 (Miss. Ct. App.), cert. denied, 936 So. 2d 367, 2006 Miss. LEXIS 482 (Miss. 2006), cert. denied, 549 U.S. 1324, 127 S. Ct. 1914, 167 L. Ed. 2d 570, 2007 U.S. LEXIS 3842 (U.S. 2007).

Appellate court affirmed the sentences imposed under Miss. Code Ann. § 41-29-139; the sentencing range for the sale of the hydrocodone was for not more than 30 years, and the sentencing range for the sale of less than one ounce of marijuana was not more than three years. Thus, the 22 year sentence on the conviction of the sale of the hydrocodone and the three year sentence on the sale of the marijuana were proper. Westbrook v. State, 928 So. 2d 186, 2005 Miss. App. LEXIS 711 (Miss. Ct. App. 2005), cert. denied, 929 So. 2d 923, 2006 Miss. LEXIS 243 (Miss. 2006).

Penalties set forth in the armed robbery statute, Miss. Code Ann. § 97-3-79, and the controlled substances statute, Miss. Code Ann. § 41-29-139, were clearly distinguishable where the specific requirement that a trial court's sentence be limited to a definite term, reasonably expected to be less than life, was applicable to an armed robbery conviction but did not apply to all crimes; therefore, the trial court did not have to consider defendant's life expectancy for the conviction of unlawful delivery of methamphetamine and unlawful possession of more than thirty grams of methamphetamine with intent to distribute. Cannon v. State, 919 So. 2d 913, 2005 Miss. LEXIS 764 (Miss. 2005).

Court rejected defendant's claim that the enhanced 10-year sentence imposed pursuant to Miss. Code Ann. § 41-29-142 upon his conviction for selling cocaine within 1,500 feet of a church in violation of Miss. Code Ann. § 41-29-139 was excessive. A pre-sentencing report was included in the record and the 10-year sentence was considerably less than the 30-year maximum provided in § 41-29-139, and defendant's sentence was well within the enhancement guidelines provided in Miss. Code Ann. § 41-29-142, which allowed a sentence of up to three times the sentence imposed under Miss. Code Ann. § 41-29-139. Moore v. State, 909 So. 2d 77, 2005 Miss. App. LEXIS 288 (Miss. Ct. App. 2005).

Defendant's 35-year enhanced sentence for selling cocaine was not excessive as the sentence imposed fell within the statutory range of available sentences: defendant was sentenced to serve 35 years, and the Miss. Code Ann. §§ 41-29-139 (b)(1), -147 provided for a maximum sentence of up to 60 years. McDougle v. State, 918 So. 2d 768, 2005 Miss. App. LEXIS 329 (Miss. Ct. App. 2005).

In a case where defendant was convicted of two counts of possession with intent to distribute and sentenced as an habitual offender, because the trial judge could consider societal concerns during sentencing, and because the judge did not exceed the maximum penalties, the trial judge did not err in sentencing defendant to 30 years for each count. Cannon v. State, 918 So. 2d 734, 2005 Miss. App. LEXIS 166 (Miss. Ct. App. 2005), cert. denied, 2005 Miss. LEXIS 537 (Miss. Aug. 25, 2005), aff'd in part and rev'd in part, 919 So. 2d 913, 2005 Miss. LEXIS 764 (Miss. 2005).

Where defendant rejected a plea bargain that had offered a more lenient sentence for the sale of cocaine, and upon conviction at trial, was sentenced to a greater sentence of 30 years in the custody of the Mississippi Department of Corrections, with the last 15 years suspended under prescribed conditions, there was no constitutional violation where the trial court had stayed aloof from the plea bargaining process and based its decision on a pre-sentence report, and where defendant's sentence was within the statutory guidelines. Rogers v. State, 891 So. 2d 268, 2004 Miss. App. LEXIS 1041 (Miss. Ct. App. 2004).

Even if defendant was convicted of possession only of the marijuana found in the first package detained in El Paso, 4.5937 kilograms, and not convicted of the cumulative weight of both packages, he would still have been required to serve a sentence of 6 to 24 years, Miss. Code Ann. § 41-29-139(c)(2)(F); the sentence he received of 22 years was within the statutory limit. Ramirez v. State, 883 So. 2d 138, 2004 Miss. App. LEXIS 940 (Miss. Ct. App. 2004).

Since defendant could not be found guilty of both possession and sale of cocaine (due to merger), the sentencing order should have reflected the jury's verdict on the sale charge only. If the judge considered the possession conviction in determining defendant's sentence, that was also improper; in order to ensure that defendant was sentenced only on the sale conviction, the appellate court reversed his sentence and remanded for a corrected sentencing order. Edwards v. State, 878 So. 2d 1106, 2004 Miss. App. LEXIS 707 (Miss. Ct. App. 2004).

Defendant, who went to trial on a charge of sale of cocaine, argued that his sentence was disproportionate to the sentence a co-defendant received. However, his co-defendant had pleaded guilty and that was a reason for receiving a lesser sentence. Thus, defendant's sentence of 30 years with 12 years suspended (albeit remanded for correction because of a merger issue), was not disproportionate to his co-defendant's sentence of 16 years for the same offense. Edwards v. State, 878 So. 2d 1106, 2004 Miss. App. LEXIS 707 (Miss. Ct. App. 2004).

Defendant who pleaded guilty to possession of cocaine was properly sentenced to 20 years in the Mississippi Department of Corrections. Graves v. State, 872 So. 2d 760, 2004 Miss. App. LEXIS 442 (Miss. Ct. App. 2004).

Denial of postconviction relief was affirmed because the imposition of a 15-year sentence for the offense of transfer of cocaine was well within the 60-year maximum sentence. The offense of transfer of cocaine carried a maximum penalty of 30-years in prison, the enhanced penalty statute allowed the sentence to be doubled where a defendant's conviction was a second or subsequent drug offense, and because it was the inmate's fourth drug conviction, his sentence could be doubled. Falconer v. State, 873 So. 2d 163, 2004 Miss. App. LEXIS 417 (Miss. Ct. App. 2004).

Defendant's sentence after pleading guilty to one count of sale of a controlled substance and one count of conspiracy was proper where his sentence was only one-fifth of the maximum permitted, Miss. Code Ann. §§ 41-29-139(b)(1), 97-1-1(h); further, he failed to object to the sentence imposed upon him by the trial court and was attempting to attack his conspiracy and sale convictions in one post-conviction filing that was not permitted, Miss. Code Ann. § 99-39-9(2), therefore, his claim was not properly presented and was procedurally barred. McMinn v. State, 867 So. 2d 268, 2004 Miss. App. LEXIS 187 (Miss. Ct. App. 2004).

Trial court's decision not to give defendant a "volume discount" but to impose 30- and 20-year consecutive sentences in two separate drug sale cases was proper, as the sentences were within the legal limits and were not grossly disproportionate. Heatherly v. State, 864 So. 2d 1036, 2004 Miss. App. LEXIS 73 (Miss. Ct. App. 2004).

Sentence imposed on defendant for the convictions of possession of a controlled substance and possession of precursor chemicals with intent to manufacture a controlled substance was not unduly harsh, given that defendant, not the girlfriend, was the driving force behind the drug activity at the couple's place of residence. Pipkins v. State, 878 So. 2d 119, 2004 Miss. App. LEXIS 15 (Miss. Ct. App.), cert. denied, 878 So. 2d 67, 2004 Miss. LEXIS 946 (Miss. 2004).

Where defendant was sentenced to consecutive sentences of 60 years for the sale of cocaine and 32 years for the possession of a certain quantity of cocaine, the sentences were within the limits of those set out by the Mississippi Legislature and, under the circumstances of the case, where defendant fit plainly within the category of repeat drug offender, since all his convictions shown in the record related to narcotic possession or narcotic trafficking, the sentences were not so unreasonably harsh as to invoke constitutional considerations of cruel and unusual punishment. Wright v. State, 863 So. 2d 1005, 2004 Miss. App. LEXIS 10 (Miss. Ct. App. 2004).

Defendant's sentence of eight years with two years suspended and a fine of $20,000 was well within the maximum limits set by Miss. Code Ann. § 41-29-139. Ford v. State, 844 So. 2d 496, 2003 Miss. App. LEXIS 378 (Miss. Ct. App. 2003).

Sentence imposed for the sale of marijuana was not excessive or disproportionate because the sentence was within the limits set forth by Miss. Code Ann. § 41-29-147; Miss Code Ann. § 41-29-139 did not apply because defendant was a second or subsequent offender. Fields v. State, 840 So. 2d 796, 2003 Miss. App. LEXIS 206 (Miss. Ct. App. 2003).

A sentence of 3 years and a $3,000 fine was not excessive and thus grossly disproportionate to the crime committed, i.e., the sale of less than one ounce of marijuana, as there was no association between the charge at issue and previous crimes for which the defendant was already being punished. Heatherly v. State, 773 So. 2d 405, 2000 Miss. App. LEXIS 573 (Miss. Ct. App. 2000).

A sentence of thirty years in the custody of the Department of Corrections without the possibility of parole for the sale of cocaine did not constitute cruel and unusual punishment where the defendant was a habitual offender with prior convictions for burglary, grand larceny, and cocaine possession. Boyd v. State, 767 So. 2d 1032, 2000 Miss. App. LEXIS 362 (Miss. Ct. App. 2000).

Applying the rationale in Stromas v. State, 618 So. 2d 116 (Miss. 1993), the sentence was not grossly disproportionate where defendant received less than the maximum sentence and less than the maximum fine. Robert v. State, 756 So. 2d 806, 1999 Miss. App. LEXIS 710 (Miss. Ct. App. 1999).

The defendant was properly sentenced for a felony, rather than a misdemeanor where he was convicted of possession of methamphetamine and cocaine under subsection (c)(1)(A) of this section. Alexander v. State, 749 So. 2d 1031, 1999 Miss. LEXIS 354 (Miss. 1999).

The imposition of a 30 year sentence and accompanying $10,000 fine for the sale of cocaine in violation of § 41-29-139 was not unconstitutionally disproportionate where the sentence was less than the maximum allowable under the statute, notwithstanding the defendant's previously clean criminal record and the meager amount of cocaine involved. Cook v. State, 728 So. 2d 117, 1998 Miss. App. LEXIS 1036 (Miss. Ct. App. 1998).

Sentences of 20 years for conspiracy to sell controlled substance and 30 years on each of two counts of sale of controlled substance, all to run consecutively, did not constitute cruel and unusual punishment, given defendant's extensive juvenile record that began when he was ten years old. Herring v. State, 691 So. 2d 948, 1997 Miss. LEXIS 37 (Miss. 1997).

Habitual offender sentence imposed on defendant convicted of possession of cocaine with intent to deliver, requiring defendant to pay $30,000 fine and to serve 30 years without possibility of early parole, was not excessive and did not constitute cruel and unusual punishment: applicable sentencing statute allowed fines of $1,000 to $1 million and prison terms of up to 30 years. Sanders v. State, 678 So. 2d 663, 1996 Miss. LEXIS 300 (Miss. 1996).

Defendant could not be sentenced to greater penalty than 5 years and/or $5,000 fine as allowed under general conspiracy statutory provision, and could not be sentenced for conspiracy as first-offender to sell greater than one ounce but less than one kilogram of marijuana, despite defendant's involvement in sale of more than one ounce but less than one kilogram of marijuana, where indictment as to charged conspiracy was silent as to quantity of marijuana involved. Clubb v. State, 672 So. 2d 1201, 1996 Miss. LEXIS 143 (Miss. 1996).

A defendant's sentence was not disproportionate to the crime and did not amount to cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution where he was convicted of possession of marijuana with intent to deliver or distribute and was sentenced to serve 20 years in the custody of the Mississippi Department of Corrections and ordered to pay a $250,000 fine, since the sentence was less than the maximum 30 years imprisonment and one million dollar fine authorized by § 41-29-139(b)(1). Hart v. State, 639 So. 2d 1313, 1994 Miss. LEXIS 243 (Miss. 1994).

In a prosecution for the sale of cocaine in violation of § 41-29-139, in which the defendant was convicted and sentenced as a habitual offender to 30 years imprisonment, the evidence was sufficient to prove that the defendant was a habitual offender under § 99-19-81 where the defendant had previously pled guilty to the sale of less than one ounce of marijuana on 2 separate occasions for which he had received a 3-year suspended sentence and a one-year sentence, and certified copies of the indictments and sentencing orders in these prior cases were introduced into evidence at the sentencing hearing. Moore v. State, 631 So. 2d 805, 1994 Miss. LEXIS 73 (Miss. 1994).

A trial court's failure to inform a defendant, who pled guilty to possession of cocaine with intent to distribute, that a $1,000.00 fine was the minimum penalty for the crime was harmless error where the record contained the defendant's written waiver of indictment, his petition to enter a plea of guilty, and a 12-page transcript of the circuit judge's interrogation of the defendant before accepting the plea. Eley v. State, 631 So. 2d 787, 1994 Miss. LEXIS 79 (Miss. 1994).

A 60-year sentence for a conviction of sale of cocaine did not violate the Eighth Amendment's prohibition against cruel and unusual punishment, even though the defendant was convicted of selling only a small amount of cocaine, where the defendant was given a 30-year sentence pursuant to § 41-29-139(b)(1) for his conviction and the sentence was then doubled pursuant to § 41-29-147 because the defendant had previously been convicted of possession of marijuana, since the sentence was within the statutory guidelines and the legislature has called for stiff penalties for drug offenders as a matter of public policy. Campbell v. Campbell, 618 So. 2d 116, 1993 Miss. LEXIS 200 (Miss. 1993).

The imposition of a 25-year sentence for the crime of possession of 5.7 grams of cocaine with intent to distribute did not constitute a denial of the defendant's constitutional rights on the ground that it was excessive and disproportionate where the defendant did not produce facts concerning sentences imposed on other criminals, the sentence was within the limits fixed by § 41-29-139(b), and the sentence was not "grossly disproportionate" or "shockingly excessive." Edwards v. State, 615 So. 2d 590, 1993 Miss. LEXIS 97 (Miss. 1993).

In a prosecution for possession of cocaine with intent to distribute, the trial court did not err in failing to order a presentence report, thus prohibiting the defendant from offering mitigating circumstances for the court's consideration prior to imposition of sentence, since presentence investigations and reports are discretionary with the trial judge and not mandatory. Edwards v. State, 615 So. 2d 590, 1993 Miss. LEXIS 97 (Miss. 1993).

A trial court did not err in sentencing a defendant who was convicted of distributing a controlled substance to 25 years' imprisonment and fining him $500,000 since the sentence was correctly fixed within the realm of § 41-29-119 and therefore was not disproportionate to the crime charged. Rogers v. State, 599 So. 2d 930, 1992 Miss. LEXIS 123 (Miss.), overruled in part, Mayfield v. State, 612 So. 2d 1120, 1992 Miss. LEXIS 861 (Miss. 1992).

A circuit court's summary denial and dismissal of a defendant's motion for post-conviction collateral relief was not error where the defendant asserted that he entered a guilty plea under the advice and belief that the maximum sentence which could be imposed under the indictment was 20 years so that his 30 year sentence was improper, the maximum sentence which could be imposed under the indictment, which charged the defendant with possession of more than one kilogram of marijuana with intent to distribute and recidivism, was 30 years without parole or probation, and the transcript of the plea colloquy between the trial court judge and the defendant belied the defendant's claim of a 20-year plea bargain. Turner v. State, 590 So. 2d 871, 1991 Miss. LEXIS 875 (Miss. 1991).

The imposition of a sentence of 40 years imprisonment and a $50,000 fine pursuant to § 41-29-139(b)(1) for possession of marijuana was error where the defendant was a first offender and had no prior felony record, so that the maximum penalty which could be imposed was 20 years imprisonment and/or a maximum fine of $30,000 as set forth in § 41-29-139(b)(2). Ivy v. State, 589 So. 2d 1263, 1991 Miss. LEXIS 802 (Miss. 1991).

The imposition of a $50,000 fine upon a conviction for the sale of 4 ounces of marijuana was error because it was in excess of the fine authorized by § 41-29-139(b)(2). Jones v. State, 564 So. 2d 848, 1990 Miss. LEXIS 292 (Miss. 1990).

A sentence of 15 years' imprisonment and a $9,000 fine for conviction of sale of cocaine was within the provisions of the statute and within the sound discretion of the trial judge, and did not constitute cruel and inhuman punishment. Bradley v. State, 562 So. 2d 1276, 1990 Miss. LEXIS 267 (Miss. 1990).

When jury convicts defendant of possession of cocaine with intent to transfer and trial judge concludes that evidence, both direct and circumstantial, fails to show intent or attempt to transfer, trial judge properly sentences defendant as though defendant had been convicted of lessor included offense of possession alone. Garvis v. State, 483 So. 2d 312, 1986 Miss. LEXIS 2353 (Miss. 1986).

Where defendant had been convicted of knowingly and intentionally selling a controlled substance, a sentence of ten years was well within the statutory limits of § 41-29-139; a trial court will not be held in error or held to have abused discretion if the sentence imposed is within the limits fixed by the statute. Johnson v. State, 461 So. 2d 1288, 1984 Miss. LEXIS 2067 (Miss. 1984).

Where an indictment did not specify the amount of marijuana in defendant's possession, and defendant could have been indicted under either § 41-29-139(b)(2), providing for a sentence of 20 years imprisonment and a $30,000 fine for possession of less than a kilogram but more than an ounce of marijuana, or § 41-29-139(b)(3), providing for a sentence of three years and a $3,000 fine for possession with intent to deliver one ounce or less of marijuana, a sentence of 20 years imprisonment and a fine of $10,000 was excessive, and the maximum sentence allowed would be imprisonment for three years and a fine of $3,000. Burns v. State, 438 So. 2d 1347, 1983 Miss. LEXIS 2934 (Miss. 1983).

The maximum sentence that may be imposed for possession of amphetamine is one year or $1,000 or both; therefore, since the two year sentence imposed upon appellant was in excess of that allowed by law, the case was remanded to the lower court for resentencing within the statutory limits. Guynes v. State, 300 So. 2d 452, 1974 Miss. LEXIS 1627 (Miss. 1974).

Where the maximum penalty under § 41-29-139(c)(2) for the offense of which the defendant is convicted is imprisonment for 20 years or a fine of $30,000, or both, a sentence of 5 years imprisonment is not an abuse of the court's discretion, notwithstanding that at time of his conviction defendant was 19 years of age and a first offender. Boone v. State, 291 So. 2d 182, 1974 Miss. LEXIS 1723 (Miss. 1974).

Since marijuana is not a narcotic drug, the applicable section as to the penalty for a sale of marijuana is Code 1942 § 6831-70(a)(2) which allows a maximum term of imprisonment of 4 years and a fine of $2,000, and a sentence of 5 years in the state penitentiary and a $1,000 fine would be reversed and remanded for proper sentencing. Ladnier v. State, 273 So. 2d 169, 1973 Miss. LEXIS 1560 (Miss. 1973).

Lysergic Acid Diethylamide belongs to the class of hallucinogens which is not a narcotic drug, so that a defendant who was sentenced to five years in the state penitentiary upon conviction of a sale of Lysergic Acid Diethylamide was sentenced to a year more than authorized by statute. Fisher v. State, 264 So. 2d 832, 1972 Miss. LEXIS 1373 (Miss. 1972).

Possession of marijuana is only a misdemeanor; a defendant convicted of possession of marijuana and sentenced to 3 years in the state penitentiary and a fine of $1000 must be resentenced. Holland v. State, 263 So. 2d 566, 1972 Miss. LEXIS 1338 (Miss. 1972).

18. Forfeiture.

Trial court erred when it granted the forfeiture of a vehicle used by a defendant and owned by defendant's sister in which drugs were found. Since the indictment and the Mississippi Crime Laboratory's report clearly established that the amount of marijuana recovered in the search of the vehicle was 238.6 grams, the proper charge was under Miss. Code Ann. § 41-29-139(c)(2)(C), not under § 41-29-139(c)(2)(D); thus, as a matter of law, the quantity of marijuana recovered and charged was statutorily excluded from forfeiture under Miss. Code Ann. § 41-29-153(a)(4)(D). Jefferson v. City of Kosciusko, 111 So. 3d 1253, 2013 Miss. App. LEXIS 167 (Miss. Ct. App. 2013).

19. Parole.

It was error to hold defendant's sentence for selling methamphetamine rendered defendant parole ineligible because (1) amendments to Miss. Code Ann. §§ 41-29-139 and 47-7-3(f) extended parole eligibility to persons convicted of selling or manufacturing controlled substances, and, (2) while these amendments occurred after defendant's claims were dismissed, an appellate court had to apply the law in effect at the time the court rendered the court's decision. Odom v. Miss. Dep't of Corr., 201 So. 3d 1114, 2016 Miss. App. LEXIS 606 (Miss. Ct. App. 2016).

Circuit court properly denied petitioner's motion for postconviction relief because the criminal informations were not fatally defective; petitioner was not eligible for parole because he pleaded guilty to possession of a controlled substance, cocaine, with intent to distribute, with a firearm enhancement. Jackson v. State, 192 So. 3d 1143, 2016 Miss. App. LEXIS 370 (Miss. Ct. App. 2016).

Offenders convicted prior to July 1, 2014, of selling or manufacturing controlled substances not exceeding the amounts specified in controlled substances law may be eligible for parole; therefore, postconviction relief was warranted in a case where an applicant had pled guilty to manufacturing and possessing methamphetamine because, based on the changes to the parole law effective on July 1, 2014 in a house bill, the conviction did not render the applicant ineligible for parole. Offenders similar to the applicant had been deemed eligible for parole prior to July 2014 due to the Mississippi Department of Corrections' misinterpretation of the law. Sinko v. State, 192 So. 3d 1069, 2016 Miss. App. LEXIS 214 (Miss. Ct. App. 2016).

IV. EVIDENCE.

20. Evidence: In general.

Evidence, including testimony from a police officer and a confidential informant regarding a drug transaction, as well as a videotape of the transaction, did not preponderate heavily against the jury's decision finding defendant guilty of selling cocaine. Hoye v. State, 1 So. 3d 946, 2009 Miss. App. LEXIS 33 (Miss. Ct. App. 2009).

Appellate court was unable to find from the record that the jury verdict finding defendant guilty of selling cocaine in violation of Miss. Code Ann. §§ 41-29-139(a)(1), 41-29-139(b)(1) was contrary to the overwhelming weight of the evidence because: (1) the fact that an agent and the informant were inconsistent in describing the amount of time and the extent of the agent's search of the informant before the controlled drug buy was a matter for jury determination as to credibility; (2) a jury could reasonably conclude from the totality of the credible evidence that since the informant entered the trailer with $40 and exited with crack cocaine and $10 in change, it was crack cocaine that defendant placed on the coffee table, even though the hands of defendant and the informant were not visible in the video and the video did not show defendant giving drugs or change to the informant; (3) defendant cited no authority for his argument that the informant's testimony was not credible because of his prior criminal history; and (4) the length of defendant's sentence was irrelevant to the issue of whether the jury verdict was against the overwhelming weight of the evidence. Miller v. State, 980 So. 2d 927, 2008 Miss. LEXIS 198 (Miss. 2008).

State presented sufficient evidence to find beyond a reasonable doubt that defendant was guilty of each element of the crime of manufacturing marijuana; defendant admitted that the marijuana plants found in the woods were his and the forensic analysis report confirmed that the plants and substances recovered from the woods and defendant's residence were indeed marijuana. Williams v. State, 971 So. 2d 581, 2007 Miss. LEXIS 571 (Miss. 2007).

Trial court did not err in denying defendant's motion for a new trial where he was convicted of the sale or transfer of cocaine. It was clear that after receiving the testimony from both a confidential informant (CI), who purchased the drugs, and defendant, that the jury found the CI's testimony more credible; further, an audio tape of the transaction and the testimony of a police officer who prepared the informant, and listened to the transaction, also provided sufficient evidence to sustain defendant's conviction. Kelly v. State, 910 So. 2d 535, 2005 Miss. LEXIS 128 (Miss. 2005).

Both defendant and the confidential informant (CI) testified that defendant asked the CI if he worked for law enforcement, and that the CI replied that he did not. Based on Mississippi precedent, the CIs actions were not improper and defendant's attempt to attack the CIs credibility on that basis failed. Defendant's other arguments as to the credibility of the CI, relating to the CI's past record and his payment from law enforcement for making the controlled buys was for the jury to determine, and given the videotape and other evidence, defendant's motion for a new trial was properly denied. Dunlap v. State, 883 So. 2d 145, 2004 Miss. App. LEXIS 946 (Miss. Ct. App. 2004), cert. dismissed, 893 So. 2d 1061, 2005 Miss. LEXIS 135 (Miss. 2005).

Informant who cooperated with the police in making the controlled buy testified that she had known defendant for two years, that she saw him just about every day in the area, and the record reflects that the informant identified defendant at trial as the person who sold her the cocaine. The record also showed that the jury viewed the videotape of the drug transaction; the question of the informant's credibility was for the jury to resolve, the verdict was not against the overwhelming weight of the evidence, and defendant's motion for a directed verdict was properly denied. Doss v. State, 906 So. 2d 836, 2004 Miss. App. LEXIS 1150 (Miss. Ct. App. 2004).

Confidential informant's testimony was not the sole testimony relied upon in identifying defendant as the person who sold the substance to the first agent, as the first agent testified that defendant was the person who sold the cocaine, a second agent testified to recognizing the voices of the first agent and the informant over the transmitter, and a local officer testified to recognizing defendant's voice over the transmitter; thus, defendant's argument that the evidence was insufficient to sustain defendant's conviction was rejected, and a new trial was properly denied. Price v. State, 865 So. 2d 408, 2004 Miss. App. LEXIS 105 (Miss. Ct. App. 2004).

Where defendant testified on direct examination that defendant had not sold drugs, that defendant was not a drug dealer, and that defendant had a prior drug conviction that had been overturned, defendant opened the door to the State's admission for use as impeachment evidence of three prior videotaped drug sales for which defendant had been charged. Pulliam v. State, 873 So. 2d 124, 2004 Miss. App. LEXIS 119 (Miss. Ct. App. 2004).

Informant was properly allowed to comment on the videotape of the drug sale during the trial because the informant had firsthand knowledge of the events transpiring in the video, and there was no invasion of the province of the jury. Pulliam v. State, 873 So. 2d 124, 2004 Miss. App. LEXIS 119 (Miss. Ct. App. 2004).

Since defendant pleaded guilty, he waived his opportunity for a jury to review the sufficiency of evidence in his case; thus, the appellate court also declined to review. Smith v. State, 845 So. 2d 730, 2003 Miss. App. LEXIS 426 (Miss. Ct. App. 2003).

Where defendant was tried for the sale of cocaine in a church zone, and an officer testified, and referred to defendant's co-defendant (whose case was severed) as being a "Columbian," any prejudicial error, from the fact Columbia was a country of known drug cartels, was harmless in light of other evidence which overwhelmingly supported the jury's verdict, and defendant was not entitled to a mistrial. Williams v. State, 856 So. 2d 571, 2003 Miss. App. LEXIS 489 (Miss. Ct. App.), cert. denied, 860 So. 2d 1223, 2003 Miss. LEXIS 816 (Miss. 2003).

Defendant argued the evidence was insufficient, because the informant was a convicted felon with pending felony charges against him; however, two officers who monitored the transaction also testified, and the jury was informed of the informant's situation; thus, the jury could weigh the testimony accordingly, and the evidence was sufficient to sustain defendant's conviction. Williams v. State, 856 So. 2d 571, 2003 Miss. App. LEXIS 489 (Miss. Ct. App.), cert. denied, 860 So. 2d 1223, 2003 Miss. LEXIS 816 (Miss. 2003).

Trial court was misled by both the State and the defense with respect to the cut-off point for misdemeanor and felony possession; however, this was insignificant because no reasonable, hypothetical juror could have found from the evidence that defendant possessed exactly 30.0 grams, no more and no less. Bailey v. State, 837 So. 2d 228, 2003 Miss. App. LEXIS 55 (Miss. Ct. App. 2003).

Defendant waived an alleged discovery violation by failing to request a continuance after objecting to the admission of the evidence. Prewitt v. State, 755 So. 2d 537, 1999 Miss. App. LEXIS 709 (Miss. Ct. App. 1999).

Evidence of prior drug sales is admissible to show a defendant's intent to distribute drugs in his or her possession, so long as it "passes muster" under Rule 403, Miss. R. Ev. and is accompanied by a proper limiting instruction. Smith v. State, 656 So. 2d 95, 1995 Miss. LEXIS 260 (Miss. 1995), overruled in part, Brown v. State, 890 So. 2d 901, 2004 Miss. LEXIS 1104 (Miss. 2004).

While evidence of prior drug transactions is admissible on the issue of a defendant's intent to distribute drugs in his or her possession, such evidence alone is not sufficient to support a finding that the defendant had the intent to distribute. Smith v. State, 656 So. 2d 95, 1995 Miss. LEXIS 260 (Miss. 1995), overruled in part, Brown v. State, 890 So. 2d 901, 2004 Miss. LEXIS 1104 (Miss. 2004).

Under Rule 803(6), Miss. R. Ev., a custodian of the records of the Mississippi Crime Lab may introduce laboratory reports in a narcotics possession or sale case, except where the defendant objects on the ground that his or her Sixth Amendment right to confront the person who prepared the test is being violated. Kettle v. State, 641 So. 2d 746, 1994 Miss. LEXIS 346 (Miss. 1994).

In a prosecution for the sale of cocaine, the trial court committed reversible error by allowing State witnesses to testify concerning another alleged sale of cocaine for which the defendant had not been convicted, which was an attempt by the State to impeach the defendant's statement elicited on cross-examination that he had never sold cocaine, where no surrebuttal was allowed by the court to refute the new evidentiary matter. Reed v. State, 637 So. 2d 194, 1994 Miss. LEXIS 249 (Miss. 1994).

There was sufficient probable cause to arrest a defendant for distribution of a controlled substance to an undercover informant, even though none of the arresting officers actually saw the drug transaction occur, where the conversation between the defendant and the undercover informant was being monitored by the officers during the transaction, the officers testified that they had surrounded the building in their cars to monitor the entrance and exit of anyone on the premises, the undercover informant gave the signal, "[t]his is good stuff" in order to alert the officers that the crime had occurred, and there was no one other than the defendant in close proximity to the informant when the officers arrived. Rogers v. State, 599 So. 2d 930, 1992 Miss. LEXIS 123 (Miss.), overruled in part, Mayfield v. State, 612 So. 2d 1120, 1992 Miss. LEXIS 861 (Miss. 1992).

Where contraband is in an amount which a person could reasonably hold for personal use, other evidence of intent to sell or deliver is necessary; evidence of involvement in the drug trade is relevant on the issue of intent. Roberson v. State, 595 So. 2d 1310, 1992 Miss. LEXIS 95 (Miss. 1992).

The quantity and nature of contraband may be sufficient to establish an intent to distribute; the State must prove that the amount possessed exceeds a personal consumption amount; each case must be adjudged on its own facts, but whatever the facts, the mere suspicion of intent cannot support a conviction, as the State must prove intent beyond a reasonable doubt. Esparaza v. State, 595 So. 2d 418, 1992 Miss. LEXIS 71 (Miss. 1992).

Proof of possession with an intent to distribute or sell should not be based solely upon surmise or suspicion. There must be evidentiary facts which will rationally produce in the minds of jurors a certainty, a conviction beyond reasonable doubt that the defendant did in actual fact intend to distribute or sell, not that the defendant might have had such intent. It must be evidence in which a reasonable jury "can sink its teeth." Stringfield v. State, 588 So. 2d 438, 1991 Miss. LEXIS 720 (Miss. 1991).

If the quantity of the drug is not in itself sufficient to establish intent to distribute, the court will consider both the quantity and the nature of the controlled substance. Incriminating evidence indicating some involvement in the drug trade may also be considered. The evidence sufficient to infer intent to sell must be evaluated in each case. Jackson v. State, 580 So. 2d 1217, 1991 Miss. LEXIS 325 (Miss. 1991).

In a prosecution for distribution of a controlled substance, a witness' pluralization of the word "indictment" was an isolated, inadvertent reference to other crimes which would be deemed "without substantial prejudice to the rights of [the defendant] to a fair trial." Davis v. State, 568 So. 2d 277, 1990 Miss. LEXIS 581 (Miss. 1990).

Although the case was required to be reversed and remanded for failure of prosecution to disclose name of witness, and because the trial judge refused to grant continuance to enable defense to find witness, testimony of narcotics enforcement personnel supported jury's verdict of guilty of selling a controlled substance. Turner v. State, 501 So. 2d 350, 1987 Miss. LEXIS 2245 (Miss. 1987).

The mere fact that there is an even balance of one witness for the prosecution and one witness for the defense in trial of a charge of sale of a controlled substance does not prevent the jury from weighing the credibility of each witness, and in deciding the issue of guilt. Brown v. State, 499 So. 2d 775, 1986 Miss. LEXIS 2823 (Miss. 1986).

Both the quantity of the contraband seized, as well as its nature, will determine whether there is sufficient circumstantial evidence to sustain a conviction of possession of marijuana with intent to distribute. Coyne v. State, 484 So. 2d 1018, 1986 Miss. LEXIS 2415 (Miss. 1986).

Evidence of discovery of controlled substances on defendant's person, in defendant's residence, and in defendant's automobile is sufficient to support conviction for possession. Dixon v. State, 465 So. 2d 1092, 1985 Miss. LEXIS 1994 (Miss. 1985).

Evidence of substantial knowing participation in consummation of sale of marijuana or in arranging for sale is sufficient to support conviction for sale of unlawful controlled substance. Williams v. State, 463 So. 2d 1064, 1985 Miss. LEXIS 1876 (Miss. 1985).

21. Admissibility — generally.

Defendant's trial counsel was not constitutionally ineffective for not objecting to the admission of defendant's prior felony drug-related conviction because the prosecution offered evidence of defendant's prior conviction for the purpose of proving intent to distribute; the trial court found that the probative value was not substantially outweighed by the danger of unfair prejudice; and the trial court gave a limiting instruction. Anderson v. State, 195 So. 3d 835, 2016 Miss. App. LEXIS 20 (Miss. Ct. App.), cert. denied, 209 So. 3d 433, 2016 Miss. LEXIS 301 (Miss. 2016).

In a case convicting defendant of possession of controlled substance with intent to distribute and unlawful possession of a firearm as a convicted felon, because the possession and discovery of the other two firearms were so interrelated to the charged crime of possession with intent to distribute cocaine that the events constituted a single transaction or occurrence, the admission of the two other firearms discovered along with the other handgun at the time of defendant's arrest did not violate the other crimes evidence rule. Anderson v. State, 195 So. 3d 835, 2016 Miss. App. LEXIS 20 (Miss. Ct. App.), cert. denied, 209 So. 3d 433, 2016 Miss. LEXIS 301 (Miss. 2016).

In a case convicting defendant of possession of controlled substance with intent to distribute and unlawful possession of a firearm as a convicted felon, the admission of the two other firearms found during a search of defendant's house was not needed to prove unlawful possession of a firearm by a convicted felon in count two of the indictment because the prosecution had offered another handgun for that purpose; however, the prosecution introduced the two other firearms that were discovered in the search as they were relevant to defendant's intent to distribute cocaine as charged in count one of the indictment. Anderson v. State, 195 So. 3d 835, 2016 Miss. App. LEXIS 20 (Miss. Ct. App.), cert. denied, 209 So. 3d 433, 2016 Miss. LEXIS 301 (Miss. 2016).

Circuit court did not err in admitting defendant's prior drug-sale convictions into evidence because the prior drug convictions were properly admitted under Miss. R. Evid. 404(b) to show defendant's intent to sell; the circuit court conducted a proper Miss. R. Evid. 403 balancing test. Campbell v. State, 118 So. 3d 598, 2012 Miss. App. LEXIS 608 (Miss. Ct. App. 2012), cert. denied, 117 So. 3d 330, 2013 Miss. LEXIS 377 (Miss. 2013).

Though a laboratory supervisor who testified that a substance was cocaine was not involved in the actual testing, he had reviewed the report for accuracy and signed it as the case technical reviewer, and was sufficiently involved with the analysis and overall process that his testimony did not violate defendant's right of confrontation under the Sixth Amendment, U.S. Const. amend. VI. Grim v. State, 102 So. 3d 1073, 2012 Miss. LEXIS 529 (Miss. 2012), cert. denied, 570 U.S. 920, 133 S. Ct. 2856, 186 L. Ed. 2d 914, 2013 U.S. LEXIS 4827 (U.S. 2013).

In defendant's trial on a charge of possession of cocaine with intent to distribute, a circuit court properly determined a defense witness's testimony was inadmissible, pursuant to Miss. R. Evid. 402, because the witness could neither verify nor deny that defendant had been transferring narcotics before he was arrested, and the witness had not seen whether defendant had discarded any narcotics while police attempted to apprehend him; thus, the witness's testimony was irrelevant. Hosey v. State, 77 So. 3d 507, 2011 Miss. App. LEXIS 348 (Miss. Ct. App. 2011), cert. denied, 78 So. 3d 906, 2012 Miss. LEXIS 19 (Miss. 2012).

There was no error, much less a miscarriage of justice, in admitting a bag of cocaine into evidence because a reasonable jury could have found that the bag of cocaine introduced at trial was the same bag defendant sold to a confidential informant the State satisfied the requirements of Miss. R. Evid. 901(a) because an officer testified that the moment the informant handed over the plastic bag, the officer sealed it in an evidence bag with a distinct identification number, and the officer identified the evidence bag as the same one he sealed right after the sale. Pearson v. State, 64 So. 3d 569, 2011 Miss. App. LEXIS 261 (Miss. Ct. App. 2011).

Defendant's conviction for the possession of at least 2, but less than 10, dosage units of hydrocodone in violation of Miss. Code Ann. § 41-29-139(c) was appropriate because the trial court did not err in admitting the recorded statement that he provided to an officer. The probative value of the evidence was not outweighed by its prejudicial effect under Miss. R. Evid. 404(a)(1) and (b) and defendant failed to consider that it was his attorney who agreed to have the statement pre-marked and who later suggested that it be entered into evidence. Sistrunk v. State, 48 So. 3d 557, 2010 Miss. App. LEXIS 159 (Miss. Ct. App.), cert. denied, 49 So. 3d 1139, 2010 Miss. LEXIS 629 (Miss. 2010).

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consider that it was his attorney who agreed to have the statement pre-marked and who later suggested that it be entered into evidence. Sistrunk v. State, 48 So. 3d 557, 2010 Miss. App. LEXIS 159 (Miss. Ct. App.), cert. denied, 49 So. 3d 1139, 2010 Miss. LEXIS 629 (Miss. 2010).

Evidence was legally sufficient to support the conviction of the sale of cocaine, Miss. Code Ann. § 41-29-139(a), and the State sufficiently established chain of custody, Miss. R. Evid. 901(a), and, therefore, properly included the cocaine and lab report into evidence; defendant failed to put forth any evidence of probable tampering or substitution of evidence, and the trial court did not err in admitting evidence of the cocaine. Turner v. State, 3 So. 3d 742, 2009 Miss. LEXIS 71 (Miss. 2009).

Trial court did not abuse its discretion in admitting cocaine bags into evidence where they were introduced to prove that what was sold to an undercover officer was a controlled substance under Miss. Code Ann. § 41-29-139(a)(1). Turner v. State, 950 So. 2d 243, 2007 Miss. App. LEXIS 107 (Miss. Ct. App. 2007).

Trial court did not abuse its discretion in admitting the transcriptions of audiotapes of the drug purchases where the appellant had not offered his own versions of the tapes for the jury to evaluate. Turner v. State, 950 So. 2d 243, 2007 Miss. App. LEXIS 107 (Miss. Ct. App. 2007).

Defendant's conviction and sentence for possession of controlled dangerous substance, cocaine, in violation of Miss. Code Ann. § 41-29-139 was affirmed when the state's introduction of a photograph, which included marijuana and violated a pretrial order that the state would not divulge evidence of marijuana to the jury, did not constitute a reversible error when defendant failed to timely object to the introduction of the photograph, failed to include his motion for a mistrial in the record, and failed to correct omissions in the record pursuant to Miss. R. App. P. 10(c) to address his claim that he was denied a meaningful appeal. Hales v. State, 933 So. 2d 962, 2006 Miss. LEXIS 262 (Miss. 2006).

Where defendant was convicted of possession of cocaine with intent to sell, the trial court had not erred by refusing to admit into evidence the transcript of defendant's nephew's guilty plea hearing because of defendant's lack of effort to secure his nephew's attendance until late afternoon on the first day of trial, thus he was not "unavailable" under Miss. R. Evid. 804(a)(5) and the plea transcript failed to meet the prior testimony hearsay exception contained in rule 804(b)(1). Jones v. State, 912 So. 2d 501, 2005 Miss. App. LEXIS 729 (Miss. Ct. App. 2005).

Where city officer investigated defendant's parked vehicle outside the city limits, no crime was committed in the officer's presence or jurisdiction, and even if the officer had been authorized to do a pat-down search for weapons under Terry v. Ohio, the officer's identification of a small "knot-like nudge" was unreasonable. The continued exploration of defendant's pockets after determining that no weapon was present amounted to the sort of evidentiary search that Terry expressly refused to authorize, and therefore, the trial court erred in failing to suppress the methamphetamine found as a result of the officer's unlawful search. McFarlin v. State, 883 So. 2d 594, 2004 Miss. App. LEXIS 509 (Miss. Ct. App. 2004).

Evidence of alcoholic beverages, failing to yield to blue lights, resisting arrest and reckless driving could be admitted, in prosecution for possession with intent to distribute cocaine, as purpose of evidence was not to establish conformity with crime charged, since testimony related only events which occurred as part of criminal episode for which defendants were arrested. Jackson v. State, 689 So. 2d 760, 1997 Miss. LEXIS 39 (Miss. 1997), superseded, Monroe v. Monroe, 745 So. 2d 249, 1999 Miss. LEXIS 229 (Miss. 1999).

Defendant waived appellate review of his claim that trial court erred in allowing evidence of marijuana and syringes at his trial for possession of methamphetamine; in his objection at trial, defendant complained of relevancy of marijuana to methamphetamine charge, but on appeal, his claim was bottomed on prejudicial effect of introduction of evidence on jury's decision. Townsend v. State, 681 So. 2d 497, 1996 Miss. LEXIS 414 (Miss. 1996).

Evidence of marijuana and syringes found at same time, same place, and in same bag as illegal substance (methamphetamine) listed on indictment form was admissible in prosecution for possession of methamphetamine; marijuana and syringes were interwoven or inseparable from charged offense, and defense counsel opened door for introduction of that evidence by hinting at its existence during voir dire. Townsend v. State, 681 So. 2d 497, 1996 Miss. LEXIS 414 (Miss. 1996).

General rule is that introduction into evidence of unlawful substances not mentioned in indictment for possession of controlled substance is reversible error unless introduction was necessary for identity, intent or motive, and was not so interwoven with other crimes that it could not be separated. Townsend v. State, 681 So. 2d 497, 1996 Miss. LEXIS 414 (Miss. 1996).

If defendant tells jury, judge and prosecution that defendant will raise proof of certain defense, judge and prosecution should be allowed to believe that defendant will indeed raise proof of that defense, and prosecution should be allowed to introduce evidence based on that belief which will rebut that defense. Sanders v. State, 678 So. 2d 663, 1996 Miss. LEXIS 300 (Miss. 1996).

An additional quantity of a substance retained by the defendant after she sold cocaine to a confidential informant could not be used to support a conviction for possession of cocaine with intent to distribute, where there was no chemical analysis adequate to show that the substance retained was an illegal controlled substance. Clayton v. State, 582 So. 2d 1019, 1991 Miss. LEXIS 366 (Miss. 1991).

In a prosecution for sale of cocaine, photographs of the cocaine were properly allowed into evidence, where the cocaine was entirely consumed in the crime lab's chemical analysis, the prosecution properly qualified the photographs as depicting the substance purchased from the defendant, and there was no suggestion or inference in the record that the original substance was destroyed in bad faith. Gibson v. State, 580 So. 2d 739, 1991 Miss. LEXIS 320 (Miss. 1991).

A tape-recording made by an undercover agent on the evening of a sale of marijuana was admissible in a prosecution for sale of marijuana, both for its incriminating contents and to establish that the accused and the undercover agent were present and together on the scene at the time in question. Cockrell v. State, 566 So. 2d 1243, 1990 Miss. LEXIS 456 (Miss. 1990).

A gun and a scale were admissible into evidence in a prosecution for possession of marijuana with intent to sell, where the gun and the scale were found in close proximity with the marijuana since weapons and scales are "tools of the drug trade," and therefore the gun and scale were relevant to the crime charged. Hemphill v. State, 566 So. 2d 207, 1990 Miss. LEXIS 460 (Miss. 1990).

Trial judge abused his discretion in excluding evidence that state's witness had borne child by friend of defendant, where such evidence was not far removed from defense of entrapment, and defendant sought to establish that state's witness was trying to "get him" because he was friend of alleged father of her child. Pulliam v. State, 515 So. 2d 945, 1987 Miss. LEXIS 2895 (Miss. 1987).

Admission of videotape of drug transaction, or referring to it in opening statement, was not error, where admission of tape did not violate defendant's Fifth Amendment right to not testify against himself, and jury was cautioned that opening statements by attorneys were not evidence and would not be evidence until admitted by court; statement by defendant to undercover agent that his wife ran business for him, and showing of videotape reflecting that part of conversation on redirect examination, was admissible, despite contention by defendant that testimony on redirect examination was on matters not in evidence. Crenshaw v. State, 513 So. 2d 898, 1987 Miss. LEXIS 2753 (Miss. 1987).

Defendant's motion to suppress should have been granted and contraband found in his automobile should not have been admitted at trial over defendant's objection, where his arrest, which was without warrant, preceded the discovery of marijuana in his automobile, and was made at time when officers had less than probable cause to arrest, was illegal. Floyd v. State, 500 So. 2d 989, 1986 Miss. LEXIS 2787 (Miss. 1986), cert. denied, 484 U.S. 816, 108 S. Ct. 68, 98 L. Ed. 2d 32, 1987 U.S. LEXIS 3558 (U.S. 1987).

There was no merit in defendant's contention that the state laboratory's use of the entire amount of the controlled substance found in his possession deprived him of an independent analysis, and therefore the test results should not have been admitted into evidence at trial. Hampton v. State, 498 So. 2d 384, 1986 Miss. LEXIS 2866 (Miss. 1986).

Admission into evidence, over defense objections, of several contraband substances not mentioned in indictment charging defendant with possession of meperdine was reversible error, where such introduction was not necessary to show identity, intent or motive, and was not so interwoven with the offense charged that it could not be separated. Bolin v. State, 489 So. 2d 1091, 1986 Miss. LEXIS 2486 (Miss. 1986).

In prosecution for sale of more than one ounce of marijuana, testimony regarding prior sale of less than one ounce is admissible where 2 transactions take place within 20 minutes of each other and it is impossible to develop circumstances leading up to second sale without mentioning first sale. Minor v. State, 482 So. 2d 1107, 1986 Miss. LEXIS 2352 (Miss. 1986).

In prosecution for sale of marijuana, testimony regarding defendant's involvement in prior marijuana sale is not admissible to establish truth of facts asserted in prosecution but is admissible where defendant has testified on direct examination, in response to question by own attorney, that he did not sell marijuana and had never sold marijuana to anyone at any time. Quinn v. State, 479 So. 2d 706, 1985 Miss. LEXIS 2283 (Miss. 1985).

Evidence that defendant accused of sale of more than one ounce of marijuana has dealt in marijuana on other occasions and has participated in romantic relationship with woman contrary to prevailing community mores is inadmissible in prosecution for sale of marijuana. Hughes v. State, 470 So. 2d 1046, 1985 Miss. LEXIS 2114 (Miss. 1985).

22. —Search and seizure.

Defendant's conviction under Miss. Code Ann. § 41-29-139(c)(1)(B) was affirmed because the articles of clothing defendant discarded while fleeing the officer were not entitled to Fourth Amendment protection because defendant lost any expectation of privacy with regard to that property. Johnson v. State, 22 So. 3d 1229, 2009 Miss. App. LEXIS 544 (Miss. Ct. App. 2009).

Defendant's convictions for possession of cocaine with the intent to distribute and possession of cocaine were appropriate because, notwithstanding that defendant consented to the search of his vehicle, the use of narcotics-detection dogs during a stop based on probable cause was not in violation of the Fourth Amendment; thus, his motion to suppress was correctly denied. Jaramillo v. State, 950 So. 2d 1104, 2007 Miss. App. LEXIS 129 (Miss. Ct. App. 2007).

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Basis of the totality of circumstances began with an anonymous tip that drug activity was occurring, and the officer responded and confirmed the anonymous source's information and smelled marijuana when he approached the cars and determined that the smell was coming from defendant's car. Defendant had admitted to having a gun on his person, so the officer, for his protection, asked defendant to get out of the car, and when defendant was out of the car, the officer found, in plain view, a bag commonly used in drug transactions with what appeared to be marijuana residue inside it; thus, defendant's arrest was supported by probable cause, and the evidence seized pursuant to a search of his person incident to arrest was admissible. Kennedy v. State, 909 So. 2d 1128, 2005 Miss. App. LEXIS 33 (Miss. Ct. App. 2005).

Officers' unannounced entry into a suspect's apartment to execute search and arrest warrants would be justified if they reasonably believed that a prior announcement would have placed them in peril, or would have produced an unreasonable risk of destruction of easily disposable narcotics evidence. Wilson v. Arkansas, 514 U.S. 927, 115 S. Ct. 1914, 131 L. Ed. 2d 976, 1995 U.S. LEXIS 3464 (U.S. 1995).

Affidavit supporting application for warrant to search defendant's motel room, when excised of false information, was not by itself sufficient to establish probable cause for issuance of warrant, where affidavit provided merely that officer who was executing other warrant found defendant in possession of large quantity of currency and motel room key, and motel manager verified that motel room was registered to defendant. Petti v. State, 666 So. 2d 754, 1995 Miss. LEXIS 587 (Miss. 1995).

Probable cause did not exist for issuance of warrant to search defendant's motel room based on information that defendant was present, with others, when drugs were purchased by confidential source, that defendant was present when police officers executed other warrant which yielded 4 grams of cocaine, and that officers found on defendant's person large amount of money and motel room key. Petti v. State, 666 So. 2d 754, 1995 Miss. LEXIS 587 (Miss. 1995).

In a prosecution for possession of crack cocaine, the search of an automobile was not valid as a search incident to an arrest for driving with a suspended license where the police officer searched the car after the defendant had been frisked, handcuffed and placed in the back seat of the officer's patrol car, and therefore the officer could have had no reasonable fear that the defendant might have had a weapon or could have been in a position to destroy incriminating evidence from the crime which led to his arrest. Ferrell v. State, 649 So. 2d 831, 1995 Miss. LEXIS 31 (Miss. 1995).

In a prosecution for possession of crack cocaine, the search of an automobile was not valid under the plain view exception to the search warrant requirement where the police officer entered the car to retrieve the keys, he saw an ordinary matchbox on the passenger seat and opened it to find only matches, and he then noticed another matchbox between the 2 front seats and opened it to find that it contained 9 rocks of crack cocaine; no incriminating evidence was visible at the time the officer entered the car, since the mere presence of a matchbox on the front seat of a car ordinarily cannot be termed an incriminating object in plain view. Ferrell v. State, 649 So. 2d 831, 1995 Miss. LEXIS 31 (Miss. 1995).

There are "degrees" of detainments which fall short of an arrest which requires probable cause; detainments which would become an arrest depending on the outcome of a pending investigation are permissible, though police officers do not have unlimited authority, and may not be clothed with the authority to detain where they are not diligently investigating in such a way which will resolve the matter. Haddox v. State, 636 So. 2d 1229, 1994 Miss. LEXIS 182 (Miss. 1994).

It was permissible for a police officer to stop an automobile and detain the occupants until a warrant to search the car was obtained where the officer had "staked out" the highway based on phone calls from a confidential informant who had given him reliable information in the past, the officer was familiar with the occupants of the car and the informant had given him their names, and the car make, license plate, and ownership of the car were confirmed by the officer before he pulled the car over. Haddox v. State, 636 So. 2d 1229, 1994 Miss. LEXIS 182 (Miss. 1994).

In a prosecution for possession of a controlled substance, cocaine which had been discarded by the defendant was not the fruit of an illegal search and seizure, and was therefore properly admitted into evidence, since the defendant was not "seized or arrested" when he discarded the drugs where the defendant did not stop when police officers ordered him to do so for the purpose of checking his identification, and he threw down the cocaine while he was walking away from the officers; the defendant was not restrained or stopped at the time he discarded the cocaine, and therefore the cocaine was abandoned and not the fruit of an unlawful seizure or arrest. Harper v. State, 635 So. 2d 864, 1994 Miss. LEXIS 201 (Miss. 1994), limited, Flowers v. State, 947 So. 2d 910, 2007 Miss. LEXIS 24 (Miss. 2007).

In a prosecution for the sale of cocaine to an undercover police officer, the trial court did not err in admitting into evidence currency seized from the defendant when he was stopped at a traffic light since the officers had probable cause to arrest the defendant without a warrant where one of the officers had videotaped the defendant earlier the same day in a drug sale transaction with other undercover officers, and the stop of the defendant for running a red light was lawful and a subsequent consensual search produced evidence justifying an arrest. Curry v. State, 631 So. 2d 806, 1994 Miss. LEXIS 81 (Miss. 1994).

A defendant did not have standing to object to a search of his sister's residence and subsequent seizure of cocaine where the defendant resided elsewhere, did not possess a key to the house, did not have permission to "have the run of the place," and, aside from the familial relationship, was "little more than a babysitter." Hopson v. State, 625 So. 2d 395, 1993 Miss. LEXIS 422 (Miss. 1993).

Marijuana seized from a bundle of clothes which the defendant was carrying from her motel room constituted "fruit of the poisonous tree" and was therefore inadmissible, where an unlawful warrantless search of the motel room lead officers to set up a surveillance, during which the defendant exited the motel room with bundles of clothing from which the marijuana was seized. Marshall v. State, 584 So. 2d 437, 1991 Miss. LEXIS 507 (Miss. 1991).

At trial of a defendant charged with possession, with intent to distribute, of more than one kilogram of marijuana, evidence obtained by a warrantless search of the trunk of an automobile which had been stopped for speeding did not require suppression where state troopers, upon approaching stopped automobile, had observed marijuana seeds and parts and had detected odor of marijuana emanating from, passenger compartment. Fleming v. State, 502 So. 2d 327, 1987 Miss. LEXIS 2336 (Miss. 1987).

Testimony of police officers as to a conversation in defendant's home between the defendant and a confidential informer, who was invited into the home, which was electronically transmitted to the officers by a transmitter concealed on the informer, was admissible in defendant's trial for illegal sale and possession of a controlled substance, notwithstanding that no search warrant had been issued. Lee v. State, 489 So. 2d 1382, 1986 Miss. LEXIS 2465 (Miss. 1986).

23. —Hearsay.

While an analyst's supervisor was not involved in the testing of a substance that proved to be cocaine, as he was sufficiently involved with the analysis and had intimate knowledge about it and the report prepared by the analyst, his testimony did not violate defendant's right of confrontation under U.S. Const. amend. VI. Jenkins v. State, 102 So. 3d 1063, 2012 Miss. LEXIS 490 (Miss. 2012), cert. denied, 570 U.S. 920, 133 S. Ct. 2856, 186 L. Ed. 2d 914, 2013 U.S. LEXIS 4749 (U.S. 2013).

Defendant's conviction for the sale of a controlled substance in violation of Miss. Code Ann. § 41-29-139(a)(1) was appropriate, in part pursuant to Miss. R. Evid. 801(c) because an audiotape of telephone conversations between a confidential informant and unknown persons was not offered for any purpose other than to corroborate the witnesses' testimony for the State that pre-buy conversations occurred between a confidential informant and unknown persons. Thus, its introduction into evidence was appropriate. Brown v. State, 969 So. 2d 855, 2007 Miss. LEXIS 680 (Miss. 2007).

Testimony of police officer, during prosecution for possession with intent to distribute cocaine, regarding arrangements made by and through confidential informant for securing controlled substance was not hearsay. Jackson v. State, 689 So. 2d 760, 1997 Miss. LEXIS 39 (Miss. 1997), superseded, Monroe v. Monroe, 745 So. 2d 249, 1999 Miss. LEXIS 229 (Miss. 1999).

The evidence was sufficient to support a conviction for possession of marijuana with intent to deliver and possession of cocaine where a search of the defendant's mother's home revealed 2 large bags of marijuana in a bedroom closet in a paper bag which also contained the defendant's shoe, the shoe contained $1,560, the defendant acknowledged owning the shoe, the search also revealed weighing scales in the same room, the defendant's purse contained marijuana and cocaine, the defendant acknowledged owning the purse and at one time acknowledged owning the marijuana in the purse, and the defendant had been at her mother's house frequently as evidenced by her car parked outside. Esparaza v. State, 595 So. 2d 418, 1992 Miss. LEXIS 71 (Miss. 1992).

In a prosecution for sale of cocaine, a police officer's testimony of a conversation between the defendant and a confidential informant, and between the defendant and the officer, in transacting the sale of cocaine was not hearsay because her testimony of this discussion was relating first-hand, relevant acts in the criminal offense; similarly, the testimony of two other police officers as to what they heard over a shortwave radio during the sale of cocaine was not hearsay since they were giving a first-hand account of what was said by the parties involved in the sale of the cocaine and this conversation was an ingredient of the crime. McDavid v. State, 594 So. 2d 12, 1992 Miss. LEXIS 9 (Miss. 1992).

Law enforcement officers who were not at the scene of a sale of a controlled substance to a law enforcement purchaser may be permitted to relate the conversation they heard via radio between the seller and the purchaser as corroboration of the purchaser's testimony of what was said, where the officer who saw and heard the seller talking first testifies what was said and such testimony is restricted to what the officers heard rather than a characterization of what the conversation was about. McDavid v. State, 594 So. 2d 12, 1992 Miss. LEXIS 9 (Miss. 1992).

In a prosecution for sale of cocaine, it was error for the trial court to exclude the defendant's testimony as to what he heard the law enforcement purchaser, the confidential informant, and another party say during the sale of cocaine where the defendant claimed that he was an innocent spectator and that the other party was the seller, and therefore any testimony as to conversations between the parties at the scene of the sale transaction was not hearsay but was a first-hand eyewitness account. McDavid v. State, 594 So. 2d 12, 1992 Miss. LEXIS 9 (Miss. 1992).

In a prosecution for sale of cocaine, testimony concerning a conversation between the defendant and an undercover narcotics agent following the sale of cocaine, which involved an offer by the defendant to sell the agent cocaine in the future at a lower price, was admissible since the conversation was a part of the entire transaction and was connected with the crime of the sale of cocaine. Bradley v. State, 562 So. 2d 1276, 1990 Miss. LEXIS 267 (Miss. 1990).

In prosecution for sale of cocaine, undercover agent may testify that, in response to agent's question regarding availability of drugs, defendant responded that he had both cocaine and other drug. Barnette v. State, 481 So. 2d 788, 1985 Miss. LEXIS 2443 (Miss. 1985).

24. —Entrapment.

Defendant's conviction for the sale of cocaine was appropriate because she failed to prove that the State induced or led her to sell crack cocaine to the buyer. According to buyer's testimony, defendant had been selling drugs earlier in the day before he presented himself at her residence and it was clear that defendant was already predisposed to selling drugs; therefore, the defense of entrapment was not available to her. Simmons v. State, 13 So. 3d 844, 2009 Miss. App. LEXIS 471 (Miss. Ct. App. 2009).

Because defendant contended that the cocaine was not hers, her entrapment defense did not apply to her possession of cocaine conviction; an entrapment defense concedes the factual component of the underlying offense. Pittman v. State, 987 So. 2d 1010, 2007 Miss. App. LEXIS 747 (Miss. Ct. App. 2007), cert. dismissed, 2008 Miss. LEXIS 368 (Miss. July 31, 2008).

Court rejected defendant's claim that she established a standard entrapment claim; defendant knew where to find cocaine and had asked the confidential informant to set aside some cocaine for her after the sale, there was no evidence that she was fearful or reluctant to participate on the day of the sale, and defendant was not excused from buying or selling cocaine simply because the informant asked her to do so. The jury, after receiving the entrapment defense instruction, clearly believed defendant was predisposed to commit both crimes of sale of cocaine and possession of cocaine. Pittman v. State, 987 So. 2d 1010, 2007 Miss. App. LEXIS 747 (Miss. Ct. App. 2007), cert. dismissed, 2008 Miss. LEXIS 368 (Miss. July 31, 2008).

Where defendant sold cocaine to an undercover agent after he was introduced to the agent by an informant, the facts supported an "asked and caught" determination. By asking defendant to sell, the informant merely created the opportunity for defendant to make the illegal sale and defendant was not repeatedly harassed or coerced to make said sale; thus, the circuit court correctly ruled against the jury instructions involving entrapment. Gill v. State, 924 So. 2d 554, 2005 Miss. App. LEXIS

653 (Miss. Ct. App. 2005), cert. denied, 927 So. 2d 750, 2006 Miss. LEXIS 171 (Miss. 2006).

Evidence of defendant's prior drug transaction was properly admitted in prosecution of defendant for possession of cocaine with intent to deliver, in order to show predisposition, even though defense never introduced evidence of entrapment; defense raised issue of entrapment, issue was alive throughout trial, from being discussed on defense's opening argument to being submitted as jury instruction, and entrapment was still viable defense at time evidence was admitted. Sanders v. State, 678 So. 2d 663, 1996 Miss. LEXIS 300 (Miss. 1996).

Where entrapment is pled as defense, evidence of predisposition is always relevant and, hence, always admissible, as very idea of entrapment suggests that person would never have committed crime had he not been persuaded or otherwise enticed. Sanders v. State, 678 So. 2d 663, 1996 Miss. LEXIS 300 (Miss. 1996).

Whether defendant has committed other similar acts in past is relevant evidence where entrapment is pled as defense, as such evidence has tendency to show predisposition. Sanders v. State, 678 So. 2d 663, 1996 Miss. LEXIS 300 (Miss. 1996).

Fact that defendant raised entrapment defense rendered law enforcement agent's testimony that he had prior information that defendant sold drugs admissible to show predisposition, despite trial judge's ultimate refusal to give entrapment instruction, in prosecution for selling crack cocaine. Walls v. State, 672 So. 2d 1227, 1996 Miss. LEXIS 139 (Miss. 1996).

When an accused pleads entrapment, his predisposition to commit the crime charged becomes a fact of consequence. Whether he has committed other similar acts in the past is relevant to show predisposition. Sayre v. State, 533 So. 2d 464, 1988 Miss. LEXIS 517 (Miss. 1988).

Trial judge abused his discretion in excluding evidence that state's witness had borne child by friend of defendant, where such evidence was not far removed from defense of entrapment, and defendant sought to establish that state's witness was trying to "get him" because he was friend of alleged father of her child. Pulliam v. State, 515 So. 2d 945, 1987 Miss. LEXIS 2895 (Miss. 1987).

25. Identity of informant.

The State need not disclose an informant's identity unless the informant will be a witness at trial or was an eyewitness to the offense, or if failure to disclose would violate a constitutional right of the defendant; thus, a trial court did not err in overruling the defendant's motion to disclose the identity of a confidential informant where the informant did not witness the offense charged and did not serve as a witness in the proceeding, but merely provided data that established probable cause to support a search warrant. Esparaza v. State, 595 So. 2d 418, 1992 Miss. LEXIS 71 (Miss. 1992).

In a prosecution for delivery of a controlled substance and possession of a controlled substance with intent to distribute, the trial court did not abuse its discretion when it denied the defendants' motion for a continuance to afford them "an opportunity to locate the confidential informer" where the defendants had previously obtained a continuance because the informant was not available and spent six months "doing nothing," the defendants did not file the motion at issue until the day before trial, there was nothing in the record detailing the prosecution's efforts, or lack thereof, to produce the confidential informant, and there was nothing suggesting prosecutorial bad faith while the record reflected substantial defense dilatoriness. Bosarge v. State, 594 So. 2d 1143, 1991 Miss. LEXIS 994 (Miss. 1991).

The prosecution was not required to reveal the identity of a confidential informant in a prosecution for sale of cocaine where an undercover narcotics agent testified that she had prearranged with the informant that he would leave the room during the time when the offense was committed, that the informant had excused himself by going to the bathroom and was not present while the sale was being made and consummated, and that the informant did not return until the transaction was entirely over. Bradley v. State, 562 So. 2d 1276, 1990 Miss. LEXIS 267 (Miss. 1990).

Identity of confidential informant who has not become de facto law enforcement officer and who is not witness to any fact constituting offense of possession of cocaine with intent to transfer for which defendant has been indicted, tried and convicted is properly withheld from defendant. Garvis v. State, 483 So. 2d 312, 1986 Miss. LEXIS 2353 (Miss. 1986).

Identity of informant who gives information upon which search warrant for drugs is based need not be disclosed to defendant in subsequent drug prosecution where confidential informant is not coconspirator intending to sell drugs, nor material witness to offense of intent to sell, and is not present when officers conduct search. Breckenridge v. State, 472 So. 2d 373, 1985 Miss. LEXIS 2449 (Miss. 1985).

In a prosecution for unlawful sale of marijuana, refusal of the court to require disclosure of the identity of an informer who had apparently advised police officers that they could purchase marijuana from the defendant, but who was not an active participant or an eye witness to the offense, was not an abuse of discretion. Young v. State, 245 So. 2d 26, 1971 Miss. LEXIS 1353 (Miss. 1971).

26. Sufficient evidence—possession.

There was sufficient evidence to support defendant's conviction for possession of methamphetamine because an oval white pill and methamphetamine were found on defendant's person, and the same type of pill and substance also was found in defendant's backpack; accordingly, sufficient evidence existed for a rational juror to find that defendant exercised dominion and control over the backpack and possessed methamphetamine. Duncan v. State, 240 So. 3d 519, 2018 Miss. App. LEXIS 133 (Miss. Ct. App. 2018).

There was substantial evidence that defendant possessed two syringes, one of which contained methamphetamine, because (1) a police officer testified that the officer was able to clearly identify defendant at the scene where the officer responded to a call; (2) the officer observed defendant remove something from defendant's pants pocket and throw it; and (3) once backup arrived, and, after the officer handcuffed defendant, the officer searched the area where the officer saw defendant throw the item and found two syringes. Cantrell v. State, 224 So. 3d 1278, 2017 Miss. App. LEXIS 464 (Miss. Ct. App. 2017).

Evidence that the pseudoephedrine, ammonium nitrate, and methamphetamine were found in a shed behind the mobile home where defendant resided, and that she handed a box with the methamphetamine to codefendant was sufficient to support her convictions for possession of pseudoephedrine and ammonium nitrate with the intent to manufacture a controlled substance and possession of .1 gram or more but less than two grams of methamphetamine. Whitehead v. State, 187 So. 3d 1091, 2016 Miss. App. LEXIS 182 (Miss. Ct. App. 2016).

Testimony that defendant admitted a pouch was his, and evidence that defendant's ID card, a VISA card, and a bag of off-white powdered substance identified as methamphetamine were in the pouch was sufficient to support defendant's conviction for possession of methamphetamine. O'Donnell v. State, 173 So. 3d 907, 2015 Miss. App. LEXIS 180 (Miss. Ct. App. 2015).

Although defendant, who was convicted of possession of a controlled substance, argued the guilty verdict ran contrary to the weight of the evidence, the appellate court could not find that allowing the guilty verdict to stand would sanction an unconscionable injustice. Sherrod v. State, 148 So. 3d 24, 2014 Miss. App. LEXIS 544 (Miss. Ct. App. 2014).

Weight of the evidence was not against the verdict, as methadone pills were found in a bag in defendant's pocket, when a vehicle in which defendant was a passenger was stopped, and the jury could have chosen not to believe defendant's testimony that the driver, defendant's sibling, had the pills and was merely trying to get rid of them when defendant then put the pills in defendant's pocket. Fay v. State, 133 So. 3d 841, 2013 Miss. App. LEXIS 445 (Miss. Ct. App. 2013), cert. denied, 133 So. 3d 818, 2014 Miss. LEXIS 149 (Miss. 2014).

Defendant's conviction for possession of marijuana was supported by evidence showing that defendant, a passenger in a car, was told that the driver's purpose in his trip was to purchase drugs, defendant knew that the substance the driver purchased was marijuana, he was in the car alone with the marijuana while the driver and another passenger were inside a gas station, and he threw the marijuana out of the car at a checkpoint. Ferguson v. State, 136 So. 3d 438, 2013 Miss. App. LEXIS 423 (Miss. Ct. App. 2013), aff'd in part, vacated in part, 136 So. 3d 421, 2014 Miss. LEXIS 210 (Miss. 2014).

Defendant's conviction for possession of a controlled substance was supported by substantial evidence that included the fact that three police officers personally observed defendant chew up and swallow a plastic bag containing methamphetamine and that when his stomach contents were removed, samples totaling 80 grams were confirmed by laboratory analysis to contain methamphetamine. Lamb v. State, 124 So. 3d 84, 2013 Miss. App. LEXIS 149 (Miss. Ct. App.), cert. denied, 123 So. 3d 450, 2013 Miss. LEXIS 557 (Miss. 2013).

Defendant's conviction for possession of cocaine in violation of Miss. Code Ann. § 41-29-139(c) was appropriate because the State provided sufficient incriminating facts to support constructive possession; in part, although defendant was correct that no one saw him in the vehicle, it was reasonable for the jury to have inferred that defendant arrived in the car. When the confidential informant left the convenience store, the vehicle in question was not present, nor was defendant, but when the police arrived minutes later, the vehicle was parked in front of the store and defendant was next to it; further, there was no evidence presented that any other persons were there when the agents arrived. Johnson v. State, 49 So. 3d 130, 2010 Miss. App. LEXIS 631 (Miss. Ct. App. 2010), rev'd, 81 So. 3d 1020, 2011 Miss. LEXIS 554 (Miss. 2011).

Circuit court properly denied defendant's motion for new trial because the evidence did not preponderate heavily against the jury's decision to find defendant guilty of possession of cocaine with the intent to distribute and possession of marijuana with the intent to distribute; a police officer found cocaine and marijuana in defendant's possession. Campbell v. State, 118 So. 3d 598, 2012 Miss. App. LEXIS 608 (Miss. Ct. App. 2012), cert. denied, 117 So. 3d 330, 2013 Miss. LEXIS 377 (Miss. 2013).

Sufficient evidence supported conviction of constructive possession of methamphetamine, Miss. Code Ann. § 41-29-139(c)(1) because defendant was found standing over a night stand in a hotel room that bore a bag containing the methamphetamine, and admitted that he had picked up the bag and looked at it, and knew that the substance was methamphetamine or cocaine; defendant was the only one in the room. Fontenot v. State, 110 So. 3d 800, 2012 Miss. App. LEXIS 615 (Miss. Ct. App. 2012).

Defendant's conviction for the possession of at least 2, but less than 10, dosage units of hydrocodone in violation of Miss. Code Ann. § 41-29-139(c) was appropriate because the State met its burden of proving that defendant possessed a controlled substance. Although defendant had a prescription for hydrocodone, he did not have a prescription for the 10 milligrams that were found in his possession; further, the officer testified that he recovered pills from defendant's truck and that those pills were later determined to have been hydrocodone. Sistrunk v. State, 48 So. 3d 557, 2010 Miss. App. LEXIS 159 (Miss. Ct. App.), cert. denied, 49 So. 3d 1139, 2010 Miss. LEXIS 629 (Miss. 2010).

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In a case in which defendant appealed his conviction as a habitual offender for possession of approximately 2.37 grams of cocaine, in violation of Mississippi Code Ann. § 99-19-83, he argued unsuccessfully that the trial court erred in denying his motion for a new trial or, alternatively, for a judgment notwithstanding the verdict because the verdict was against the overwhelming weight of the evidence. There was sufficient evidence since: (1) the jury heard testimony from two officers that a bag of cocaine was found in the back seat of the vehicle and that defendant was the only passenger in the back seat; (2) both officers testified that defendant exhibited suspicious behavior before the stop and behaved in a nervous-like manner during the stop, unlike the other persons in the vehicle; (3) a crack pipe and a small amount of cocaine were found on defendant's person during the pat-down search; and (4) defendant gave an officer a false name. Clay v. State, 20 So. 3d 743, 2009 Miss. App. LEXIS 696 (Miss. Ct. App. 2009).

Trial court did not err in failing to grant a directed verdict because there was sufficient evidence for reasonable, fair-minded jurors to conclude that defendant was guilty of possession of at least 10 grams, but less than 30 grams, of cocaine within 1,500 feet of a playground, in violation of Miss. Code Ann. § 41-29-139(c)(1)(D); officers found a brown paper bag containing five separate bags of cocaine on the driver's seat and a set of digital scales under the driver's seat of a car that defendant was driving. Daniels v. State, 9 So. 3d 1194, 2009 Miss. App. LEXIS 252 (Miss. Ct. App. 2009).

In a joint trial for the sale of cocaine, in violation of Miss. Code Ann. § 41-29-139(a)(1), an informant's testimony that the informant gave defendant one $100 to purchase the cocaine was sufficient to prove the sale of cocaine. Miller v. State, 17 So. 3d 1109, 2009 Miss. App. LEXIS 133 (Miss. Ct. App.), cert. denied, 17 So. 3d 99, 2009 Miss. LEXIS 456 (Miss. 2009).

Evidence was sufficient to convicted defendant of possession of less than 0.10 gram of cocaine in violation of Miss. Code Ann. § 41-29-139(c)(1)(A) because a forensic examiner testified that cocaine was found in defendant's shirt and pants pockets, the examiner testified that the cocaine was visible with the naked eye, and a jury could reasonably have concluded defendant was wearing his own clothes. Hudson v. State, 31 So. 3d 1, 2009 Miss. App. LEXIS 58 (Miss. Ct. App. 2009), rev'd, 30 So. 3d 1199, 2010 Miss. LEXIS 160 (Miss. 2010).

Where defendant tossed a pill bottle into the street containing crack cocaine when he saw an officer approaching, the evidence was sufficient to support defendant's conviction for possession of cocaine pursuant to Miss. Code Ann. § 41-29-139. A search of defendant's person revealed $1,280 dollars in one of his pants pockets. Dampeer v. State, 989 So. 2d 462, 2008 Miss. App. LEXIS 491 (Miss. Ct. App. 2008).

Defendant's conviction for possession of methamphetamine was appropriate because a passenger told the deputy that she and defendant had bought it from a black male and the deputy also testified that defendant told him that she and the passenger had gone to meet the male to purchase crystal methamphetamine. Accepting as true all the evidence supporting defendant's guilty verdict, the appellate court was unable to find that the circuit court erred in denying defendant's motion for a JNOV. Barnett v. State, 987 So. 2d 1070, 2008 Miss. App. LEXIS 412 (Miss. Ct. App. 2008).

To convict defendant of possession, the State had to prove that defendant knowingly or intentionally possessed a controlled substance under Miss. Code Ann. § 41-29-139; substances found in defendant's vehicle amounted to 134.7 grams of marijuana and 13.7 grams of cocaine, there was testimony that defendant was in possession of the drugs, the jury was free to judge the credibility of this testimony, and the evidence was sufficient to support defendant's guilty verdict, such that the trial court did not err in denying defendant's motion for a judgment notwithstanding the verdict. Davis v. State, 995 So. 2d 767, 2008 Miss. App. LEXIS 181 (Miss. Ct. App.), cert. denied, 999 So. 2d 374, 2008 Miss. LEXIS 678 (Miss. 2008).

Because defendant never filed a motion for a new trial or a motion for judgment notwithstanding the verdict, defendant did not bring the issue that the verdict might have been against the overwhelming weight of the evidence to the attention of the trial court, and thus it could not be raised for the first time on appeal; however, procedural bar aside, the State showed that defendant possessed the drugs in question for purposes of Miss. Code Ann. § 41-29-139 and defendant did not bring forward any contradictory evidence and rested after the State's case, and thus the verdict was not so contrary to the overwhelming weight of the evidence. Harris v. State, 977 So. 2d 1248, 2008 Miss. App. LEXIS 175 (Miss. Ct. App. 2008).

Weight of the evidence supported the State's claim that defendant was in possession of the marijuana found in the vehicle driven by him, as well as in possession of the cocaine before the package was thrown from the vehicle, and the jury was free to evaluate the credibility of this evidence, such that a new trial was not warranted in this case. Davis v. State, 995 So. 2d 767, 2008 Miss. App. LEXIS 181 (Miss. Ct. App.), cert. denied, 999 So. 2d 374, 2008 Miss. LEXIS 678 (Miss. 2008).

For purposes of defendant's conviction of possession of marijuana with intent to sell in violation of Miss. Code Ann. § 41-29-139, to establish defendant's constructive possession, given that no evidence showed that defendant owned the car he was driving, the State offered evidence that a police officer smelled marijuana on defendant, defendant confessed that it was his and that the cocaine was not, defendant confessed that he and his passenger were going to sell the marijuana, and the passenger had not seen a bag of drugs until defendant threw it at him during the stop; thus, the State put forth sufficient evidence that defendant possessed the marijuana found in the bag and there was sufficient evidence to support the trial court's denial of defendant's motion for a directed verdict. Harris v. State, 977 So. 2d 1248, 2008 Miss. App. LEXIS 175 (Miss. Ct. App. 2008).

Evidence supported defendant's conviction of possession of cocaine; defendant provided no evidence supporting her claim that the cocaine was planted in her car by police, amounting to official misconduct that allegedly constituted entrapment as a matter of law, and defendant was the only person in her car, the cocaine was found in a box in which defendant admitted that she kept drugs, and the jury was unpersuaded, as was the court, that defendant's allegations were sufficient to have required reversal. Pittman v. State, 987 So. 2d 1010, 2007 Miss. App. LEXIS 747 (Miss. Ct. App. 2007), cert. dismissed, 2008 Miss. LEXIS 368 (Miss. July 31, 2008).

Because defendant actively participated in an illegal drug transaction, the evidence was sufficient to support her sale of cocaine conviction without proof of benefit from the sale. Pittman v. State, 987 So. 2d 1010, 2007 Miss. App. LEXIS 747 (Miss. Ct. App. 2007), cert. dismissed, 2008 Miss. LEXIS 368 (Miss. July 31, 2008).

Where an officer testified that he found 288 pseudoephedrine pills in a car, defendant admitted that he was planning to cook methamphetamine, he instructed a passenger in a car to go into a store and get "some," and he admitted that a trip was made to purchase pseudoephedrine, convictions under Miss. Code Ann. §§ 41-29-139, 41-29-313(2)(c) were adequately supported by the evidence. Vardaman v. State, 966 So. 2d 885, 2007 Miss. App. LEXIS 706 (Miss. Ct. App. 2007).

Because there was sufficient evidence to support a conviction on the conspiracy to possess marijuana with intent to sell more than five kilograms of marijuana, the necessary nexus existed to link defendant to the possession of the 25 pounds of marijuana bricks found in the co-conspirator's vehicle; thus, there was sufficient evidence to support her conviction for possession of more than five kilograms of marijuana. Williams v. State, 984 So. 2d 989, 2007 Miss. App. LEXIS 376 (Miss. Ct. App. 2007), cert. dismissed, 2008 Miss. LEXIS 332 (Miss. June 26, 2008).

Where the evidence showed that defendant was chewing something when officers approached his car, he failed to rebut evidence showing that he was the owner of the car, and drugs were found on the driver's side of the car, there was sufficient evidence to support a conviction for cocaine possession under Miss. Code Ann. § 41-29-139(c)(1)(B). Bates v. State, 952 So. 2d 320, 2007 Miss. App. LEXIS 169 (Miss. Ct. App. 2007).

Evidence was sufficient to find defendant guilty of possession of cocaine in an amount less than one-tenth of one gram, Miss. Code Ann. § 41-29-139, because, inter alia: (1) defendant was in actual physical possession of the cocaine because it was found on his person during a routine booking at a jail house; (2) when defendant was questioned about the bag, he told the officer that the bag was a candy wrapper and asked the officer to dispose of the bag in the garbage; and (3) at no time did defendant disclaim the bag, as to suggest that it did not belong to him, and in fact he identified the bag falsely as a candy wrapper; therefore, the trial court did not err in denying defendant's motion for a directed verdict. Nance v. State, 948 So. 2d 459, 2007 Miss. App. LEXIS 32 (Miss. Ct. App. 2007).

Evidence was sufficient to support defendant's conviction for possession of marijuana where he possessed the package by taking delivery, thus exercising control and dominion over the package knowing it contained drugs. Shanks v. State, 951 So. 2d 575, 2006 Miss. App. LEXIS 647 (Miss. Ct. App. 2006).

Possession of cocaine conviction was affirmed because any rational juror could have concluded that defendant knowingly possessed cocaine at the time of his arrest, and that the verdict was not against the overwhelming weight of the evidence, when the jury heard the testimony from the officers that they observed defendant toss the cocaine onto the ground, and the jury had defendant's confession that he possessed cocaine at the time of his arrest. Mayes v. State, 925 So. 2d 130, 2005 Miss. App. LEXIS 802 (Miss. Ct. App. 2005), cert. denied, 927 So. 2d 750, 2006 Miss. LEXIS 335 (Miss. 2006).

There was more than sufficient evidence from which jurors could reasonably conclude that defendant was in constructive possession of both the precursor chemicals and the methamphetamine at the lab; additional incriminating facts and circumstances supported defendant's awareness of the presence and character of the chemicals. Kerns v. State, 923 So. 2d 196, 2005 Miss. LEXIS 799 (Miss. 2005), cert. denied, 547 U.S. 1081, 126 S. Ct. 1797, 164 L. Ed. 2d 536, 2006 U.S. LEXIS 3096 (U.S. 2006).

As defendant testified he had cocaine in his possession the morning he was robbed by his crack cocaine dealer, and gave cocaine to the officer at the scene after reporting the robbery, the evidence was sufficient to convict him of possession under Miss. Code Ann. § 41-29-139. Brown v. State, 907 So. 2d 336, 2005 Miss. LEXIS 437 (Miss. 2005).

There was sufficient evidence for the jury to find defendant guilty of possession of cocaine because (1) an officer noticed that defendant threw something on the floor beside the left side of a chair; (2) the officer detained defendant, put him in handcuffs, and advised another officer of the presence of the substance that defendant threw on the floor; (3) the other officer retrieved the substance and placed it in a clear plastic evidence bag; and (4) the substance was later taken to the crime lab, where it was determined to contain cocaine. Harris v. State, 921 So. 2d 366, 2005 Miss. App. LEXIS 423 (Miss. Ct. App. 2005), cert. denied, 926 So. 2d 922, 2006 Miss. LEXIS 155 (Miss. 2006).

Where an informant purchased $60 worth of cocaine from defendant at a motel room, there was enough evidence to support the jury's verdict that defendant was guilty of the sale and possession of cocaine. Williams v. State, 903 So. 2d 752, 2005 Miss. App. LEXIS 188 (Miss. Ct. App. 2005).

Circuit court did not err in denying defendant's motion for a new trial where the police officers testified that they witnessed defendant throwing bags out of the window of a truck while attempting to elude them, and these bags were recovered and found to contain cocaine. Sweet v. State, 910 So. 2d 735, 2005 Miss. App. LEXIS 211 (Miss. Ct. App. 2005).

There was sufficient evidence to support defendant's convictions of possession of a controlled substance and possession of precursor chemicals with intent to manufacture a controlled substance; the State proved that the property where the evidence was seized was rented in defendant's name and the account for utilities was also in defendant's name, and thus constructive possession was shown, and there was nothing to support defendant's theory that the items were placed on the property in defendant's absence. Pipkins v. State, 878 So. 2d 119, 2004 Miss. App. LEXIS 15 (Miss. Ct. App.), cert. denied, 878 So. 2d 67, 2004 Miss. LEXIS 946 (Miss. 2004).

Evidence was sufficient to support defendant's conviction for the crime of possession of a controlled substance, cocaine, where a security officer saw defendant drop something when defendant was running away from the officer and where the officer recovered in that exact location a matchbox with six pieces of crack cocaine inside. Griffin v. State, 859 So. 2d 1032, 2003 Miss. App. LEXIS 1083 (Miss. Ct. App. 2003).

Sufficient evidence was presented to support a conviction for possession and sale of a controlled substance because the testimony of a confidential informant was not subject to corroboration; the informant was not an accomplice. Hill v. State, 865 So. 2d 371, 2003 Miss. App. LEXIS 983 (Miss. Ct. App. 2003).

Defendant's conviction for more than two grams but less than 10 grams of methamphetamine was proper where the court's constructive possession jury instruction was an adequate representation of the law and where the State put forward evidence from which a jury could have found defendant in constructive possession of the drugs. Taylor v. State, 841 So. 2d 1185, 2003 Miss. App. LEXIS 293 (Miss. Ct. App. 2003).

Where various witnesses testified to undercover operation, including testimony that defendant directed assistant to deliver cocaine to informant, defendant's controlled substance convictions were not against the weight of the evidence. Jones v. State, 841 So. 2d 213, 2003 Miss. App. LEXIS 253 (Miss. Ct. App. 2003).

At trial, the trooper identified defendant as the individual who possessed the alleged cocaine, and an employee of the Mississippi Crime Lab also testified that the substance found in defendant's shoe during an inventory search did test positive for cocaine; more importantly, defendant confessed to possessing the cocaine, and therefore, the evidence was clearly sufficient to support defendant's conviction. Jackson v. State, 856 So. 2d 412, 2003 Miss. App. LEXIS 258 (Miss. Ct. App. 2003).

Defendant picked up drugs at a house, defendant was stopped by the trooper, the trooper discovered the cocaine under the seat, and the truck belonged to defendant; thus, the evidence showed that defendant constructively possessed the drugs, that defendant was guilty of conspiracy to possess cocaine and possession of cocaine with intent to sell, and that the trial court did not err in denying defendant's motion for JNOV or motion for new trial. Smith v. State, 839 So. 2d 489, 2003 Miss. LEXIS 65 (Miss. 2003).

Jury verdict was not against the overwhelming weight of the evidence as the accomplice's testimony, which was adopted by the jury as true, showed that defendant was not only aware of the presence of the cocaine in the vehicle, but that defendant was intentionally and consciously in possession of it, as defendant had helped to pack it in the car and was to be the experienced leader of the illegal excursion. Maldonado v. State, 796 So. 2d 247, 2001 Miss. App. LEXIS 298 (Miss. Ct. App. 2001).

Evidence was sufficient to support a conviction for possession of cocaine where (1) prior to arresting the defendant pursuant to a warrant, an officer checked the back seat of his vehicle for contraband and found none, (2) after arresting the defendant and transporting him to jail, the officer again checked the back seat of his vehicle and found a baggy containing cocaine in the seat, and (3) another officer, who had assisted by watching the defendant, testified that he did not see anyone place the cocaine in the vehicle. Jones v. State, 760 So. 2d 61, 2000 Miss. App. LEXIS 234 (Miss. Ct. App. 2000).

Evidence was sufficient to support a conviction for possession of cocaine where (1) a police officer attempted to stop the defendant's car when he noticed that the light over the rear license plate was stopped, (2) the defendant fled from the officer and tossed something out the window before stopping, and (3) upon searching the area, a chapstick vial with 13 rocks of crack cocaine was found. Lee v. State, 767 So. 2d 1025, 2000 Miss. App. LEXIS 297 (Miss. Ct. App. 2000).

Evidence was sufficient to show possession of marijuana where (1) the defendant admitted ownership of a shaving kit in which the marijuana was found and also admitted placing the kit in the back seat of a third person's car, (2) the pair then drove to the house trailer of one of the third person's friends, (3) they were there for an hour and then began a brief automobile ride that ended with a collision, and (4) immediately after the wreck, the defendant tried to get others to dispose of the shaving kit; although the defendant claimed that he did not know there was marijuana in the shaving kit and the shaving kit was not always in his possession. The jury properly rejected the contention that another person for reasons unknown secreted marijuana in the shaving kit during the defendant's stay at the trailer. Meek v. State, 2000 Miss. App. LEXIS 64 (Miss. Ct. App. Feb. 8, 2000), rev'd, 2001 Miss. LEXIS 80 (Miss. Apr. 5, 2001).

Evidence was sufficient to show constructive possession of marijuana by the defendant where the defendant was found with a pair of scissors in his hand while standing near containers with freshly cut marijuana in a house owned by his mother and with no one else in the house shown to have had a substantial connection to it or control of it. Fox v. State, 756 So. 2d 753, 2000 Miss. LEXIS 41 (Miss. 2000).

Evidence was sufficient to establish felony possession of marijuana. Alexander v. State, 736 So. 2d 1058, 1999 Miss. App. LEXIS 78 (Miss. Ct. App. 1999).

The evidence was sufficient to show possession by the defendant of more than one kilogram of marijuana found in his automobile where, although there was evidence that the defendant loaned the automobile to another person and that this other person loaded the marijuana into the automobile while the defendant was not present, (1) the defendant thereafter drove the car approximately eight hours before permitting the other person to drive, (2) the defendant remained in the car as a passenger, and (3) the pungent smell of the marijuana permeated the inside of the vehicle and was readily detected by an officer when he entered the vehicle. Fuente v. State, 734 So. 2d 284, 1999 Miss. App. LEXIS 38 (Miss. Ct. App. 1999).

Defendants had constructive possession of cocaine carried by defendants' accomplice, who was employee at defendants' place of business and who followed defendants to location of drug delivery in automobile rented by one defendant. Jackson v. State, 689 So. 2d 760, 1997 Miss. LEXIS 39 (Miss. 1997), superseded, Monroe v. Monroe, 745 So. 2d 249, 1999 Miss. LEXIS 229 (Miss. 1999).

Evidence in prosecution for possession of methamphetamine supported finding that such contraband was under defendant's knowing dominion and control; defendant was sole occupant in vehicle titled in his name, bag containing methamphetamine was on passenger side floor board, within defendant's immediate control, and defendant should have known that it was in his car. Townsend v. State, 681 So. 2d 497, 1996 Miss. LEXIS 414 (Miss. 1996).

In a prosecution for possession of cocaine with intent to deliver, the evidence was sufficient to establish that the defendant was in constructive possession of crack cocaine where a police officer felt what he described as a match box during a patdown search of the defendant, the defendant was the only passenger in the back seat of a police car that was searched immediately prior to his occupancy and again after he left the car, an officer saw him squirming in the back seat while he was being transported to the police station and noticed that he had worked his hands around to his left side as if he were reaching in his pocket, a search of the defendant at the police station failed to turn up a match box, and a match box containing crack cocaine was found in the back seat of the police car after the defendant had been escorted into the police station. Miller v. State, 634 So. 2d 127, 1994 Miss. LEXIS 136 (Miss. 1994).

In a prosecution for possession of cocaine with intent to distribute, the evidence was sufficient to support a guilty verdict on the matter of possession where the defendant was observed by a police officer in a characteristic drug sale scenario, the defendant ran and attempted to barricade himself in a bedroom in his mother's home when the officer ordered him to stop, the officer saw him toss something near the bed, and 2 rocks of cocaine were found in the exact location where the officer had seen the defendant throw something. Boyd v. State, 634 So. 2d 113, 1994 Miss. LEXIS 134 (Miss. 1994).

The evidence was sufficient to support a conviction of possession of marijuana, even though the defendant testified that he had no marijuana on the day in question, where a narcotics officer stated that he saw the defendant with a plastic bag in his hand, the defendant threw that bag when the officer appeared, the officer watched the bag from the time it was in the defendant's hand until it was in custody, and the bag contained 6 smaller bags which were tested both in the field and the laboratory and determined to contain marijuana. Jackson v. State, 580 So. 2d 1217, 1991 Miss. LEXIS 325 (Miss. 1991).

Testimony of police officer, although contradicted, was sufficient to support a finding that defendant had constructive possession of marijuana, and to support a conviction for possession of more than one ounce but less than a kilogram of the substance. Kinzey v. State, 498 So. 2d 814, 1986 Miss. LEXIS 2849 (Miss. 1986).

Admission of defendant that bedroom in trailer owned by defendant in which drugs were found was his, combined with testimony of others that drugs found were defendant's share of drugs previously obtained by defendant and other person, not only suffices to show defendant's constructive possession, but approaches showing of actual possession. Pool v. State, 483 So. 2d 331, 1986 Miss. LEXIS 2370 (Miss.), cert. denied, 476 U.S. 1160, 106 S. Ct. 2280, 90 L. Ed. 2d 722, 1986 U.S. LEXIS 1548 (U.S. 1986).

State may be allowed to proceed on indictment charging 5 counts of possession of controlled substances where crimes charged have same elements and proof, although carrying different maximum punishments, and arose from same transaction or occurrence; trial court properly recognizes different maximum punishments by sentencing defendant separately on each charge for which convicted. Dixon v. State, 465 So. 2d 1092, 1985 Miss. LEXIS 1994 (Miss. 1985).

Evidence that even though the defendant did not actually lease the apartment where drugs were found, he had been spending at least three evenings a week there and had moved his furniture into the residence was sufficient to support a finding that the defendant possessed the marijuana found in the apartment. Holland v. State, 263 So. 2d 566, 1972 Miss. LEXIS 1338 (Miss. 1972).

27. —Sale or distribution, or intent as to same.

Circuit court properly convicted defendant of possession of a controlled substance with intent to distribute because, in response to an anonymous call reporting prostitution activity at a certain motel room, police noticed drug paraphernalia, a scale, and glass pipes in plain view, defendant then signed a written consent to search the motel room, defendant admitted that the drugs were his and that he was breaking it up into "party packs" for people who were about to come because he was having a party, and the substance was determined to be methamphetamine. Dunnaway v. State, 226 So. 3d 1257, 2017 Miss. App. LEXIS 544 (Miss. Ct. App. 2017).

Evidence was sufficient to support defendant's conviction of selling cocaine where the confidential informant (CI) testified unequivocally that on the day in question she bought cocaine from defendant, whom she knew well, and a video of the exchange corroborated her testimony, as it appeared to show an exchange of cash and then the CI returned to the officer and the agent a short time later with $50 worth of cocaine. Thomas v. State, 195 So. 3d 843, 2016 Miss. App. LEXIS 97 (Miss. Ct. App. 2016).

Defendant was properly convicted of selling Xanax and marijuana because an informant and police officers testified about a controlled buy of the substances from defendant by the informant, and, after the sale, an officer pulled over defendant's car and recovered the previously recorded buy money from defendant's pocket during a pat-down search of defendant. Malone v. State, 196 So. 3d 1003, 2015 Miss. App. LEXIS 604 (Miss. Ct. App. 2015), cert. denied, 202 So. 3d 614, 2016 Miss. LEXIS 311 (Miss. 2016).

Defendant's conviction for possession of cocaine with intent to transfer was not against the weight of the evidence because the State proved that defendant was a willing participant in a drug deal, that he took an undercover officer's money, that he left momentarily and returned with a controlled substance, and that he affirmatively stated that he planned to give the crack to the officer so long as he could trust him. Wells v. State, 160 So. 3d 1136, 2015 Miss. LEXIS 85 (Miss.), overruled in part, Rowsey v. State, 188 So. 3d 486, 2015 Miss. LEXIS 573 (Miss. 2015).

There was sufficient and clear evidence to convict defendant of possession of cocaine with intent to transfer because defendant put crack cocaine in a pipe and attempted to hand it to an undercover police officer, which was clearly an act evincing his intent to transfer a controlled substance to another; the jury heard the audio recording of the encounter and the officer's description of the event, and it found against defendant. Wells v. State, 160 So. 3d 1136, 2015 Miss. LEXIS 85 (Miss.), overruled in part, Rowsey v. State, 188 So. 3d 486, 2015 Miss. LEXIS 573 (Miss. 2015).

Evidence was sufficient to find defendant guilty of possession of a controlled substance with intent to distribute because the police received a tip that he was distributing cocaine from his sister's apartment, the police conducted a traffic stop shortly after he was seen leaving the apartment, a white powder was found on his face and in his car, he was carrying a large amount of cash, and personal items belonging to him were found in his room along with cocaine and digital scales. Floyd v. State, 155 So. 3d 883, 2014 Miss. App. LEXIS 317 (Miss. Ct. App. 2014), cert. denied, 154 So. 3d 33, 2015 Miss. LEXIS 48 (Miss. 2015).

Indictment did not state that defendant possessed pure hydrocodone, but it was a Schedule II substance, plus, as the tablets admitted into evidence contained hydrocodone and the evidence showed that defendant sold generic Lortab containing 10 milligrams of hydrocodone and 500 milligrams of acetaminophen, the State provided sufficient evidence to support the charges in the indictment. Riley v. State, 126 So. 3d 1007, 2013 Miss. App. LEXIS 832 (Miss. Ct. App. 2013).

Evidence was sufficient to convict defendant of possession of an illegal, controlled substance with the intent to sell, manufacture, or distribute that illegal substance because defendant had actual possession of the ecstasy as the detective testified that he witnessed defendant throw a clear bag with a blue substance to the wall of the residence while the detective was just outside of it, and the field-test conclusion that the pills were ecstasy was confirmed by the crime lab; and because defendant intended to distribute the drugs as the detective testified that the 21 ecstasy pills found on defendant, in an area known for heavy drug trafficking, was an amount inconsistent with personal consumption. Cooper v. State, 145 So. 3d 1219, 2013 Miss. App. LEXIS 686 (Miss. Ct. App. 2013), aff'd, 145 So. 3d 1164, 2014 Miss. LEXIS 433 (Miss. 2014).

Defendant's conviction for selling cocaine in violation of this section was not against the weight of the evidence because a confidential informant testified that he purchased cocaine from defendant and his testimony was corroborated by testimony of police officers; although the audio and video tapes of their meeting did not explicitly refer to drugs or show an exchange, the informant possessed an amount of cocaine afterwards that he did not have prior to his meeting with defendant. Wallace v. State, 139 So. 3d 75, 2013 Miss. App. LEXIS 627 (Miss. Ct. App. 2013), cert. denied, 139 So. 3d 74, 2014 Miss. LEXIS 265 (Miss. 2014).

Sufficient circumstantial evidence supported defendant's conviction for conspiracy to distribute under Miss. Code Ann. §§ 97-1-1 and 41-29-139 as the evidence showed that a witness had purchased marijuana at defendant's house, that a large quantity of it was found in multiple locations throughout the house, that the house smelled strongly of it, and that digital scales and packaging materials were also found. Further, defendant admitted that the marijuana belonged to him. Jackson v. State, 73 So. 3d 1176, 2011 Miss. App. LEXIS 296 (Miss. Ct. App.), cert. denied, 73 So. 3d 1168, 2011 Miss. LEXIS 523 (Miss. 2011).

Sufficient evidence supported defendant's conviction for possession of cocaine with the intent to distribute, Miss. Code Ann. § 41-29-139, despite defendant's argument that no one testified he sold cocaine, because there was video of defendant making several hand-to-hand transactions with people, defendant attempted to evade the police as they approached, defendant discarded cocaine in the process of evading the police, and defendant had approximately $60 when he was arrested. Hosey v. State, 77 So. 3d 507, 2011 Miss. App. LEXIS 348 (Miss. Ct. App. 2011), cert. denied, 78 So. 3d 906, 2012 Miss. LEXIS 19 (Miss. 2012).

Evidence was sufficient to support defendant's conviction for selling cocaine where a confidential informant testified that the informant went to defendant's trailer, greeted defendant, asked to see the cocaine the informant had arranged to purchase, entered the trailer, counted out money, placed the money on the kitchen counter, exited the trailer, and then waited in his vehicle until a plastic container was thrown out of the trailer onto the yard. The confidential informant's testimony was corroborated by video and audio tapes and the testimony of the agent who heard the drug sale over a remote audio device. Liddell v. State, 33 So. 3d 524, 2010 Miss. App. LEXIS 183 (Miss. Ct. App. 2010).

In a case in which defendant was convicted of unlawful possession of at least one-tenth but less than two grams of cocaine with intent to distribute, in violation of Miss. Code Ann. § 41-29-139, he argued unsuccessfully that the verdict was against the overwhelming weight of the evidence. Defendant had previously been convicted of the same offense, he was in possession of cocaine at the time of his arrest, a narcotics agent, who was with a police officer when defendant was arrested, identified him as the person who had sold him crack cocaine four days prior to the incident, at the time of the arrest, defendant did not possess any paraphernalia associated with smoking crack cocaine and that there was a large, separate amount of cocaine found inside the car, and defendant possessed a generous amount of cash at the time of his arrest. Williams v. State, 30 So. 3d 375, 2010 Miss. App. LEXIS 81 (Miss. Ct. App. 2010).

There was sufficient evidence to support the jury's decision that defendant was guilty of possession of methamphetamine with the intent to distribute because law enforcement officers found 684 tablets that contained pseudoephedrine, numerous precursors necessary to manufacture methamphetamine, critical components modified to manufacture methamphetamine, scales that were typically used to weigh methamphetamine prior to selling it, and small zip-lock baggies typically used to package methamphetamine prior to selling it, and an expert testified that the quantity of methamphetamine discovered was more than what most users would have for personal use; it is necessary to consider that various items usable in drug manufacture were found when determining whether there was sufficient evidence to support a conviction for possession of methamphetamine with intent to distribute. Bond v. State, 42 So. 3d 587, 2010 Miss. App. LEXIS 94 (Miss. Ct. App.), cert. denied, 42 So. 3d 24, 2010 Miss. LEXIS 455 (Miss. 2010).

Circuit court did not err in denying defendant's motion for a directed verdict because there was sufficient evidence to support his conviction for possession of cocaine with the intent to distribute; the credibility of an accomplice, who was given immunity in exchange for her testimony, was an issue for the jury, and the jury was informed that the accomplice was a cocaine addict, and that the accomplice received immunity for her testimony against defendant. Defendant's requested jury instructions were properly denied. Peterson v. State, 37 So. 3d 669, 2010 Miss. App. LEXIS 58 (Miss. Ct. App. 2010).

Defendant's conviction for the sale of cocaine, in violation of Miss. Code Ann. 41-29-139(a)(1), was supported by sufficient evidence because (1) two officers testified that they searched a confidential informant's person and vehicle before the buy occurred; (2) the officers also testified that they heard, over the sound device installed on the informant, the exchange between defendant and the informant that consummated the sale; (3) the informant testified that he immediately placed the drugs that he had purchased from defendant in the evidence bag and that he did not tamper with the evidence bag in any way after he placed the drugs in it. It was also confirmed by the crime lab that the substance in the evidence bag was indeed crack cocaine. Buckley v. State, 19 So. 3d 832, 2009 Miss. App. LEXIS 715 (Miss. Ct. App. 2009).

Evidence was sufficient to support a conviction for possession of crack cocaine with intent to distribute because defendant admitted to an intention to sell the crack cocaine that was found in defendant's bedroom, and there was evidence that defendant had also bought and sold cocaine on at least one prior occasion. Jones v. State, 20 So. 3d 57, 2009 Miss. App. LEXIS 694 (Miss. Ct. App. 2009).

Where the State's witnesses testified that defendant contacted a confidential informant, asked him if he wanted to buy drugs, arranged a meeting, and placed crack cocaine on the hood of the informant's vehicle, defendant's conviction for the sale of cocaine was not against the overwhelming weight of the evidence. Jefferson v. State, 27 So. 3d 410, 2009 Miss. App. LEXIS 299 (Miss. Ct. App. 2009), cert. denied, 27 So. 3d 404, 2010 Miss. LEXIS 68 (Miss. 2010).

There was sufficient evidence to convict defendant for the sale of cocaine because he testified that he was the man depicted in the video recording giving the informant crack cocaine in a paper towel and receiving $100 in return. Although defendant was delivering drugs for another person, he knew that he was to give drugs to the informant in exchange for money, and therefore he knowingly participated in the sale of drugs, making guilty of the sale of an illegal controlled substance. Thames v. State, 5 So. 3d 1178, 2009 Miss. App. LEXIS 170 (Miss. Ct. App. 2009).

Evidence was sufficient to withstand a directed verdict in a case involving the sale of cocaine because, even though the quality of a videotaped drug transaction was poor, it was up to the jury to evaluate the credibility of the witnesses, including a confidential informant. The jury watched the videotape and was informed of the informant's criminal history before deciding how much weight to give each during their deliberations. Mosely v. State, 4 So. 3d 1069, 2009 Miss. App. LEXIS 106 (Miss. Ct. App. 2009).

Verdict finding defendant guilty of selling cocaine in violation of Miss. Code Ann. § 41-29-139(a)(1) and conspiracy to sell cocaine in violation of Miss. Code Ann. § 97-1-1(a)(1) was not against the overwhelming weight of the evidence as there was testimony from several witnesses, including an accomplice, a narcotics agent, and a police officer, that defendant was involved in the drug sale. In addition, the jury was permitted to watch a video showing defendant's physical behavior during the drug sale negotiations in which defendant was shown talking to the accomplice with his hand over his mouth as the accomplice negotiated with an informant about the price of the cocaine. Foriest v. State, 4 So. 3d 385, 2009 Miss. App. LEXIS 36 (Miss. Ct. App. 2009).

Conviction for the sale of a controlled substance, under Miss. Code Ann. § 41-29-139, was affirmed because an informant's testimony was contradicted by one defense witness and an appellate court deferred to the jury's province to pass upon the credibility of witnesses. Brown v. State, 995 So. 2d 698, 2008 Miss. LEXIS 586 (Miss. 2008).

Although a videotape of a meeting between defendant and a confidential informant did not depict an actual exchange of money, it did show defendant placing something into the informant's hand. This evidence, coupled with a narcotics agent's testimony that he heard the informant ask defendant for $60 worth of cocaine, and the fact that the informant returned with cocaine and without the state funds, was enough for a reasonable juror to infer that a transfer for money took place. Miller v. State, 983 So. 2d 1051, 2008 Miss. LEXIS 181 (Miss. 2008).

Evidence was sufficient to support a conviction under Miss. Code Ann. § 41-29-139 because the State was not required to show that defendant personally placed crack cocaine in an informant's hands or personally profited from a sale; an aiding and abetting jury instruction was given, and the State showed substantial knowing participation in the consummation of a sale or in arranging a sale where defendant went with another man to buy the substance, but did not physically give it to the informant. Spann v. State, 970 So. 2d 135, 2007 Miss. LEXIS 695 (Miss. 2007).

Because the evidence clearly established that defendant sold and possessed cocaine, the court rejected defendant's claim that the convictions were against the overwhelming weight of the evidence. Pittman v. State, 987 So. 2d 1010, 2007 Miss. App. LEXIS 747 (Miss. Ct. App. 2007), cert. dismissed, 2008 Miss. LEXIS 368 (Miss. July 31, 2008).

Evidence was sufficient to support defendant's conviction of sale of cocaine; an entrapment defense conceded the factual component of the underlying offense and there was sufficient evidence that defendant sold cocaine, plus there was an audio recording of the transaction and defendant was caught with some of the buy money in her wallet. Pittman v. State, 987 So. 2d 1010, 2007 Miss. App. LEXIS 747 (Miss. Ct. App. 2007), cert. dismissed, 2008 Miss. LEXIS 368 (Miss. July 31, 2008).

Evidence was more than adequate to support defendant's sale of a Scheduled II controlled substance conviction in weight and sufficiency because both an officer and a confidential informant identified defendant as the perpetrator on a audio/video recording of the drug sale transaction, and test results introduced at trial confirmed that the substance exchanged was rock cocaine; therefore, defendant's motion for JNOV/new trial was properly denied. Williams v. State, 963 So. 2d 1262, 2007 Miss. App. LEXIS 548 (Miss. Ct. App. 2007).

Evidence was sufficient to convict defendant of conspiracy to possess marijuana with intent to sell more than five kilograms of marijuana under Miss. Code Ann. § 97-1-1(a) because a co-conspirator's vehicle contained more than 25 pounds of marijuana, the mere amount of marijuana was sufficient to support a charge of possession with intent to transfer, sell, or distribute more than five kilograms of marijuana, and defendant blocked a deputy's attempt to pull over a co-conspirator's vehicle. Williams v. State, 984 So. 2d 989, 2007 Miss. App. LEXIS 376 (Miss. Ct. App. 2007), cert. dismissed, 2008 Miss. LEXIS 332 (Miss. June 26, 2008).

Evidence was sufficient to convict defendant of selling cocaine because: (1) while the videotape of the controlled drug buy was not perfect, the jury was entitled to give the footage whatever weight it believed was proper; (2) a confidential informant identified defendant in court and testified that defendant was the individual from whom he purchased cocaine; (3) although defendant claimed that the confidential informant's testimony was contradictory, conflicting, and lacked credibility, and was itself unsupported by the videotape, the confidential informant's testimony was largely consistent and was corroborated somewhat by an agent's testimony; (4) it was up to the jury to give whatever weight it deemed appropriate to the confidential informant's testimony; and (5) the confidential informant's narration of the videotape was proper as it was confined to matters he actually perceived first-hand. McCoy v. State, 954 So. 2d 479, 2007 Miss. App. LEXIS 248 (Miss. Ct. App. 2007).

Where the evidence consisted of an audio and video of defendant participating in a drug transaction, and a confidential informant testified regarding such, there was sufficient evidence to support a conviction under Miss. Code Ann. § 41-29-139(a)(1), despite defendant's assertion that he was out of state at the time and his argument that the informant was not credible due to a prior felony conviction; therefore, his motion for a directed verdict/judgment notwithstanding the verdict was properly denied and a new trial was not warranted since the verdict was not contrary to the overwhelming weight of the evidence. Magee v. State, 951 So. 2d 589, 2007 Miss. App. LEXIS 123 (Miss. Ct. App. 2007).

Directed verdict was properly denied in a case involving the sale of crack cocaine under Miss. Code Ann. § 41-29-139 because it was within the province of the jury to assess the credibility of a coded confidential informant and an undercover agent making the drug buy; both identified defendant from a photo lineup after the buy and testified as to their personal knowledge. Johnson v. State, 950 So. 2d 178, 2007 Miss. LEXIS 125 (Miss. 2007).

Even though a confidential informant was biased due to the fact that he was working with police due to a pending shoplifting charge and the fact that he had been shot by defendant during an altercation, the jury was the proper judge of credibility; therefore, there was sufficient evidence to support a conviction under Miss. Code Ann. § 41-29-139 based on video and audio evidence of a drug buy. Jones v. State, 961 So. 2d 730, 2007 Miss. App. LEXIS 71 (Miss. Ct. App.), cert. dismissed, 962 So. 2d 38, 2007 Miss. LEXIS 415 (Miss. 2007).

Evidence was sufficient to convict defendant of selling a schedule II controlled substance within 1,500 feet of a church and was not against the overwhelming weight of the evidence because, inter alia: (1) it was clear from the record that an informant did not have drugs on his person when he entered the home of defendant's mother; (2) it was clear that the informant did have drugs when he left her house; (3) a tape indicated that he purchased drugs from a male individual in the mother's home; and (4) the informant specifically identified defendant in court as the dealer; therefore, the trial court did not err in denying defendant's motions for a directed verdict, for a judgment notwithstanding the verdict, and for a new trial. Singleton v. State, 948 So. 2d 465, 2007 Miss. App. LEXIS 52 (Miss. Ct. App. 2007).

Defendant's conviction for the sale of dextropropoxyphene, a schedule IV controlled substance, in violation of Miss. Code Ann. § 41-29-139(a)(1), was proper because the jury heard evidence that defendant did not appear frightened at the moment of the sale, that she successfully asserted a claim for money otherwise going to the man she claimed placed her in imminent fear of physical harm, that she later left that man without incident and probably could have at any time, and that she voluntarily sold Darvocet because she hoped to profit from it; in all actuality, her defense was that she feared the potential of physical harm at some point in the future, rather than at the moment the sale occurred and, as such, it was within the province of the jury to resolve the issue with a conviction. Smith v. State, 948 So. 2d 474, 2007 Miss. App. LEXIS 43 (Miss. Ct. App. 2007).

At trial, the jury saw a videotape of defendant selling drugs to a confidential informant; defendant waived his rights and confessed to selling cocaine. There was sufficient evidence to support his conviction for the sale of cocaine in violation of Miss. Code Ann. § 41-29-139. Williams v. State, 936 So. 2d 387, 2006 Miss. App. LEXIS 197 (Miss. Ct. App. 2006).

Evidence was sufficient to support defendant's conviction for sale of cocaine where a witness testified that defendant took the cocaine from another person, placed it in a car, rode with it to the final destination, and gave it to the witness to deliver to the agent; involvement as a courier was sufficient to support a conviction for sale of cocaine. Dear v. State, 960 So. 2d 542, 2006 Miss. App. LEXIS 931 (Miss. Ct. App. 2006), cert. denied, 959 So. 2d 1051, 2007 Miss. LEXIS 396 (Miss. 2007).

Evidence was sufficient to convict defendant where the evidence presented against defendant at trial included direct evidence by way of an audio-visual recording and testimony that defendant received money and handed the undercover officer cocaine in exchange for that money. Hudderson v. State, 941 So. 2d 221, 2006 Miss. App. LEXIS 803 (Miss. Ct. App. 2006).

When a confidential informant set up a drug buy with defendant, the transaction was recorded on a surveillance tape; although defendant argued that a reasonable jury would have believed his testimony over the testimony of the confidential informant, it was within the jury's province to deem the confidential informant's testimony more credible. Walker v. State, 956 So. 2d 292, 2006 Miss. App. LEXIS 746 (Miss. Ct. App. 2006), cert. denied, 957 So. 2d 1004, 2007 Miss. LEXIS 270 (Miss. 2007).

Defendant's conviction for possession of 73.7 grams of marijuana with intent to distribute in violation of Miss. Code Ann. § 41-29-139(a)(1) was proper where there was a wealth of testimony indicating that the park in question was a city owned and maintained park. Thus, a reasonable juror would have been justified in concluding that a city park would have been available for public use. Foster v. State, 928 So. 2d 873, 2005 Miss. App. LEXIS 733 (Miss. Ct. App. 2005), cert. denied, 929 So. 2d 923, 2006 Miss. LEXIS 309 (Miss. 2006).

Evidence was sufficient to sustain a conviction for the sale of cocaine where a confidential informant testified that after receiving money from him, defendant stated that he would be back in thirty minutes, and the informant testified that there were no drugs in the house before defendant arrived; that negated defendant's argument that the informant planted drugs in the house. Bindon v. State, 926 So. 2d 222, 2005 Miss. App. LEXIS 701 (Miss. Ct. App. 2005).

Defendant's accomplice cooperated with police and stated in a recorded conversation that defendant had come to Mississippi "to pick up drugs;" the police also found twenty-seven pounds of marijuana that had been transferred to defendant's vehicle. The evidence was sufficient to support defendant's conviction for unlawful possession of more than five kilograms of marijuana with intent to distribute and conspiracy to distribute marijuana. Walker v. State, 911 So. 2d 998, 2005 Miss. App. LEXIS 698 (Miss. Ct. App. 2005).

Sufficient evidence existed to support defendant's conviction for the sale of a controlled substance, alprazolam, in violation of Miss. Code Ann. § 41-29-139(a)(1), because an informant testified that defendant sold him the substance, the transaction was videotaped, the videotape was seen and heard by the jury, a crime lab technician testified that the evidence consisted of 12 whole tablets and .84 grams of crushed tablets, and a crime lab technician testified that an analysis using gas chromatography with mass spectrometry revealed that the substance was alprazolam. Burgess v. State, 911 So. 2d 982, 2005 Miss. App. LEXIS 669 (Miss. Ct. App. 2005).

Defendant's conviction for the sale of cocaine within 1,500 feet of a church in violation of Miss. Code Ann. §§ 41-29-139 and 41-29-142 was proper where the State offered sufficient testimony from two officers and an employee of the Mississippi Crime Lab to satisfy the requirement of Miss. R. Evid. 901(a) for establishing a proper chain of custody for admission of the cocaine at trial. Johnson v. State, 904 So. 2d 162, 2005 Miss. LEXIS 380 (Miss. 2005).

Weight of the evidence against defendant demonstrated that sufficient proof was offered for the jury to find defendant guilty; the jury properly chose to believe the State's witnesses, and their testimony over that of defendants, and the confidential informant's testimony was properly admitted by the trial court where there was never an issue presented as to the veracity of the informant's statements or the information acquired from his participation. Hodges v. State, 906 So. 2d 23, 2004 Miss. App. LEXIS 1029 (Miss. Ct. App. 2004), cert. dismissed, 904 So. 2d 184, 2005 Miss. LEXIS 348 (Miss. 2005).

Defendant's involvement as a courier was sufficient conduct to support his conviction for the sale of cocaine. Edwards v. State, 878 So. 2d 1106, 2004 Miss. App. LEXIS 707 (Miss. Ct. App. 2004).

In defendant's trial for sale of cocaine, the fact that portions of a videotape that purportedly recorded the drug transaction were missing did not diminish the effect of the testimony of the confidential informant who made the drug buy. Steen v. State, 873 So. 2d 155, 2004 Miss. App. LEXIS 435 (Miss. Ct. App. 2004).

Prosecution did not need to prove that defendant handed the cocaine directly to the undercover agent or that he personally profited from the sale in order to be found guilty as a principal. The evidence the prosecution did present was sufficient to convict defendant of sale of a schedule II controlled substance because (1) it showed that defendant was present and intimately involved with the sale of cocaine to the undercover agent through his contact and (2) defendant's witnesses, who testified that defendant was not at the scene of the sale, were impeached at trial. Jackson v. State, 885 So. 2d 723, 2004 Miss. App. LEXIS 483 (Miss. Ct. App.), cert. denied, 887 So. 2d 183, 2004 Miss. LEXIS 1348 (Miss. 2004).

Evidence was sufficient to convict defendant of sale of cocaine where the jury resolved any conflicts in favor of the verdict and there was no reason to disturb the jury's verdict; the verdict was not so contrary to the overwhelming weight of the evidence that allowing it to stand would have sanctioned an unconscionable injustice. Carter v. State, 869 So. 2d 1083, 2004 Miss. App. LEXIS 304 (Miss. Ct. App. 2004).

Defendant questioned the discrepancies between the officer's testimony that two rocks of cocaine were purchased, and the crime laboratory report which indicated only one rock of crack cocaine was received; however, the appellate court held the undercover officer's eyewitness account, the videotape recording the transaction, and the testimony of witnesses showing the chain of custody of the substance, were sufficient to support defendant's conviction. Bullins v. State, 868 So. 2d 1045, 2004 Miss. App. LEXIS 234 (Miss. Ct. App. 2004).

Where a confidential informant testified to buying drugs from defendant, an officer heard the transaction occurring over the informant's body transmitter, the officer was familiar with defendant's voice, and the money used to buy the drugs was found inside the residence during a subsequent search, there was sufficient evidence to support a conviction for the sale of cocaine, despite the fact that the money was located on defendant's girlfriend, and the recorder on the confidential informant was accidentally turned off. Stubbs v. State, 878 So. 2d 130, 2004 Miss. App. LEXIS 31 (Miss. Ct. App.), cert. denied, 878 So. 2d 67, 2004 Miss. LEXIS 936 (Miss. 2004).

Trial court properly denied defendant's motion for judgment notwithstanding the verdict following a jury conviction of the sale of cocaine, Miss. Code Ann. § 41-29-139; the verdict was supported by sufficient evidence and was not against the manifest weight of the evidence, as defendant failed to show that the fact that an undercover officer had paid defendant five dollars to purchase crack cocaine had made defendant an employee of a narcotics task force when he purchased cocaine. Minor v. State, 861 So. 2d 356, 2003 Miss. App. LEXIS 1198 (Miss. Ct. App. 2003).

Evidence was legally sufficient to support every element of the crime for which defendant was charged where the officer testified on the scenario and the use of a confidential informant; as a result, the trial court was correct in denying defendant's motion for a directed verdict, and, when viewing all the evidence in a light consistent with the verdict and giving the State all favorable inferences that may be drawn from the evidence, the verdict was not against the overwhelming weight of evidence. Wolverton v. State, 859 So. 2d 1073, 2003 Miss. App. LEXIS 1073 (Miss. Ct. App. 2003).

Defendant's conviction and sentence for possession of more than one kilogram of marijuana with intent to distribute were both proper where the evidence of at least the first parcel should not have been suppressed because the evidence presented to the magistrate in the affidavit along with proof of the drug dog's "alerting" to the package was sufficient probable cause to meet the totality of the circumstances test; although the detention of the second package for eight days without a search warrant might have violated the reasonableness test, it was not sufficient grounds for reversal because it was not objected to at the trial level and if defendant was convicted for possession only of the marijuana found in the first package and not convicted of the cumulative weight of both packages, she would have been required to serve a sentence of 4 to 16 years and the sentence of 6 years that she did receive was within the statutory limit. Arguelles v. State, 867 So. 2d 1036, 2003 Miss. App. LEXIS 1081 (Miss. Ct. App. 2003).

Evidence was sufficient to convict defendant for the sale of cocaine where the State presented substantial evidence, including an audio tape of a transaction between defendant and a civilian informant that corroborated much of the civilian's testimony concerning the transaction and was properly admitted as evidence. Denson v. State, 858 So. 2d 209, 2003 Miss. App. LEXIS 1001 (Miss. Ct. App. 2003).

Evidence was sufficient to support defendant's conviction for possession with intent to distribute marijuana as it showed that defendant had mailed a package weighing in excess of 36 pounds to an individual, defendant drove the individual to the post office to pick up the package, agreed to pay the individual $500 to pick up the package, after having picked up the package, defendant fled when law enforcement officers attempted to stop him, and the package contained drugs in an amount that far exceeded personal use amounts. Clarke v. State, 859 So. 2d 1021, 2003 Miss. App. LEXIS 841 (Miss. Ct. App. 2003).

Trial court properly denied defendant's motion for directed verdict and/or judgment notwithstanding the verdict where all the evidence pointed to the fact that defendant had committed the crime of selling cocaine. Berry v. State, 859 So. 2d 399, 2003 Miss. App. LEXIS 906 (Miss. Ct. App. 2003).

Evidence was sufficient to convict defendant where the jury could have reasonably found defendant to be in constructive possession of cocaine because there were sufficient facts to warrant a finding that defendant was aware of the presence of cocaine and was intentionally and consciously in possession of it. Lenoir v. State, 853 So. 2d 845, 2003 Miss. App. LEXIS 720 (Miss. Ct. App. 2003).

Sufficient evidence existed to deny defendant's motion for a directed verdict and convict defendant, where the jury was allowed to hear an audiotape of defendant selling crack cocaine to a confidential informant, a police officer testified that he had prepared the informants for the buy, searched both informants and their car, placed the body wire on the informants, listened to the transaction as it occurred, and received the crack cocaine directly after the buy. Mims v. State, 856 So. 2d 518, 2003 Miss. App. LEXIS 377 (Miss. Ct. App.), cert. denied, 859 So. 2d 1017, 2003 Miss. LEXIS 522 (Miss. 2003).

Reviewing the evidence in a light favorable to the verdict, the appellate court found that the officers involved in the drug sale testified as to the transaction, the substance sold tested positive for the presence of cocaine, and defendant admitted that defendant sold the substance to an undercover officer; thus, the facts supported the jury's verdict finding defendant guilty of selling cocaine and the trial court did not abuse its discretion in denying defendant's motion for new trial. Green v. State, 856 So. 2d 396, 2003 Miss. App. LEXIS 233 (Miss. Ct. App. 2003), rev'd, in part, 884 So. 2d 733, 2004 Miss. LEXIS 714 (Miss. 2004).

Where various witnesses testified to undercover operation, including testimony that defendant directed assistant to deliver cocaine to informant, defendant's controlled substance convictions were not against the weight of the evidence. Jones v. State, 841 So. 2d 213, 2003 Miss. App. LEXIS 253 (Miss. Ct. App. 2003).

Concerning the sufficiency of the evidence, the jurors had sufficient evidence to find defendant guilty of selling cocaine, including the officers' testimony regarding the sale, the videotape of the transaction, and the confirmation that the item sold did contain cocaine; thus, the trial court properly denied defendant's request for a directed verdict and defendant's motion for a judgment notwithstanding the verdict. Green v. State, 856 So. 2d 396, 2003 Miss. App. LEXIS 233 (Miss. Ct. App. 2003), rev'd, in part, 884 So. 2d 733, 2004 Miss. LEXIS 714 (Miss. 2004).

Evidence was sufficient to convict defendant of selling cocaine within 1500 feet of a church; defendant sold crack cocaine to a narcotics agent, who testified that defendant was the seller, and a criminal investigator testified that a videotape of the transaction showed that defendant was the seller. McDonald v. State, 807 So. 2d 447, 2001 Miss. App. LEXIS 262 (Miss. Ct. App. 2001).

No entrapment of the defendant occurred and, therefore, he was properly convicted of transferring cocaine where (1) narcotics agents simply contracted with a confidential informant to call the defendant and ask for drugs, (2) there was no evidence that the informant was ordered to take any extreme measures to induce the defendant into accepting his offer to buy crack cocaine, and (3) the informant paid standard street value for the cocaine purchased from the defendant. Tran v. State, 785 So. 2d 1112, 2001 Miss. App. LEXIS 217 (Miss. Ct. App. 2001).

Evidence was sufficient to establish five separate sales of crack cocaine by the defendant based on his substantial knowing participation in the consummation of the sales or in arranging for the sales of cocaine. Lewis v. State, 765 So. 2d 493, 2000 Miss. LEXIS 138 (Miss. 2000).

The judge correctly found that the defendant failed to give sufficient information and assistance to the Bureau, regardless of the indefiniteness of the type and degree of information required, that objectively should or would have aided in an arrest or prosecution of other violators of subsection (f) of this section. Lewis v. State, 765 So. 2d 493, 2000 Miss. LEXIS 138 (Miss. 2000).

Evidence was sufficient to establish the defendant's intent to distribute marijuana where he was found in possession of more than eight ounces of marijuana, some of which was contained in 10 small bags, and a witness testified that he bought two bags of marijuana in the house in which the defendant was found. Fox v. State, 756 So. 2d 753, 2000 Miss. LEXIS 41 (Miss. 2000).

Evidence was sufficient to establish a transfer of cocaine by the defendant to a confidential informant, notwithstanding the defendant's assertion that they were engaged in a joint venture to use cocaine and that, therefore, there was no transfer, where the defendant knowingly transferred cocaine to the confidential informant and there was no evidence that they combined their money or property to purchase the cocaine. Hamilton v. State, 756 So. 2d 844, 2000 Miss. App. LEXIS 43 (Miss. Ct. App. 2000).

Evidence was sufficient to show a transfer of marijuana where (1) the defendant admitted ownership of a shaving kit in which the marijuana was found and also admitted placing the kit in the back seat of a third person's car, (2) the pair then drove to the house trailer of one of the third person's friends, (3) they were there for an hour and then began a brief automobile ride that ended with a collision, (4) immediately after the wreck, the defendant gave the shaving to a good samaritan and tried to get him to dispose of it, and (5) the suspicions of the good samaritan led him to give it right back. Meek v. State, 2000 Miss. App. LEXIS 64 (Miss. Ct. App. Feb. 8, 2000), rev'd, 2001 Miss. LEXIS 80 (Miss. Apr. 5, 2001).

Evidence was sufficient to establish a sale by the defendant to an undercover police officer where a confidential informant transferred the drugs at the behest of the defendant, the drugs were under the defendant's direct control, and he was cognizant of the existence of the undercover officer. York v. State, 751 So. 2d 1194, 1999 Miss. App. LEXIS 612 (Miss. Ct. App. 1999).

Evidence was sufficient to support a conviction for the sale of amphetamines. Sullivan v. State, 749 So. 2d 983, 1999 Miss. LEXIS 347 (Miss. 1999).

Evidence was sufficient to show that the defendant sold cocaine where (1) an officer testified that he bought crack cocaine from a man during a sting operation on the day in question, and identified that man as the defendant, (2) a detective testified that he had known the defendant and his brother for 12 years and that the defendant was the man depicted on the videotape of the drug sale and the still photograph taken from that same videotape, and (3) the jury was able to view the videotape of the transaction and the defendant in the courtroom. Galloway v. State, 735 So. 2d 1117, 1999 Miss. App. LEXIS 158 (Miss. Ct. App. 1999).

The evidence was sufficient to support a conviction for sale or transfer of a controlled substance where it appeared that the defendant was "minding the store" for her husband but actually involved herself with the sale at issue. Bingham v. State, 723 So. 2d 1193, 1998 Miss. App. LEXIS 960 (Miss. Ct. App. 1998).

Evidence was sufficient to support a conviction for the sale of cocaine where (1) there was positive in-court identification of the defendant as the seller of cocaine on two separate occasions on a certain date, (2) a videotape of the transactions was introduced, and three persons identified the individual in the videotape as the defendant, and (3) an agent testified that he monitored the transactions by way of listening devices. White v. State, 722 So. 2d 1242, 1998 Miss. LEXIS 433 (Miss. 1998).

Evidence was sufficient to support the defendant's conviction for sale of cocaine, enhanced as a second offender where he sold three rocks of cocaine to an informant and the transaction was captured on audiotape which was presented at his trial. Bridges v. State, 716 So. 2d 614, 1998 Miss. LEXIS 302 (Miss. 1998).

Defendant's convictions for sale of controlled substance and conspiracy to sell controlled substance were supported by evidence that defendant sold two rocks of crack cocaine to undercover informant and that defendant conspired with relative to sell, and did sell, two rocks of crack cocaine to undercover officer next day. Herring v. State, 691 So. 2d 948, 1997 Miss. LEXIS 37 (Miss. 1997).

Where controlled substance is present in amount which person could reasonably hold for personal use, other evidence of possible involvement in drug trade may be sufficient to establish intent to deliver. Jackson v. State, 689 So. 2d 760, 1997 Miss. LEXIS 39 (Miss. 1997), superseded, Monroe v. Monroe, 745 So. 2d 249, 1999 Miss. LEXIS 229 (Miss. 1999).

Defendants' intent to deliver cocaine which they possessed was established by evidence that quantity of cocaine was beyond amount which average user could consume and by testimony of accomplice and police officer regarding arrangements of controlled "buy." Jackson v. State, 689 So. 2d 760, 1997 Miss. LEXIS 39 (Miss. 1997), superseded, Monroe v. Monroe, 745 So. 2d 249, 1999 Miss. LEXIS 229 (Miss. 1999).

The evidence was sufficient to support a conviction of accessory before the fact of sale of cocaine where the defendant approached a vehicle that an undercover agent and an informant were driving, and told them that they were late and the cocaine had been "sent back," but to wait and someone would "take care" of them. Turner v. State, 573 So. 2d 1340, 1990 Miss. LEXIS 832 (Miss. 1990).

The evidence was sufficient to support a conviction of sale of cocaine, in spite of the defendant's argument that the evidence was insufficient because none of the State's witnesses personally observed cocaine and money changing hands, where the witnesses testified that the defendant entered a vehicle with another person who was holding $100 in cash, and that person exited the vehicle several minutes later with the cocaine and without the cash. Walton v. State, 642 So. 2d 930, 1994 Miss. LEXIS 441 (Miss. 1994).

The evidence was sufficient to establish the defendant's "substantial knowing participation in the consummation of a sale or in arranging for the sale" of cocaine where the defendant told the buyer that he knew where he could get some crack cocaine, he got into the buyer's car, he told the seller that the buyer wanted to purchase some cocaine, and he remained with the buyer and seller while the sale was consummated. Johnson v. State, 642 So. 2d 924, 1994 Miss. LEXIS 443 (Miss. 1994).

In a prosecution for possession of cocaine with intent to distribute, the evidence was sufficient to support a guilty verdict on the matter of intent, even though the defendant had only 2 rocks of cocaine in his possession, where he was seen by a police officer engaged in conduct which was characteristic of selling drugs in a locale known for that activity, possession of a small quantity of contraband was characteristic of the street sale of drugs in that location, and the defendant ran and attempted to barricade himself in a room in his mother's home when he was ordered to stop by a police officer. Boyd v. State, 634 So. 2d 113, 1994 Miss. LEXIS 134 (Miss. 1994).

The evidence was sufficient to prove a defendant's intent to distribute cocaine where the defendant had possession of 47 individual pieces of crack cocaine and made an admission at the time of his arrest concerning his involvement in trafficking drugs. Edwards v. State, 615 So. 2d 590, 1993 Miss. LEXIS 97 (Miss. 1993).

The evidence was sufficient to establish that the defendant had the intent to sell cocaine where the defendant was in constructive possession of approximately 1200 rocks of cocaine, the cocaine was packaged on 46 separate bricks, police officers found approximately $5,000 and a firearm hidden underneath a dishwasher, a police officer testified that he saw people coming and going from the apartment where the cocaine was found, and 5 rocks of cocaine were seized from a person leaving the apartment. Roberson v. State, 595 So. 2d 1310, 1992 Miss. LEXIS 95 (Miss. 1992).

The evidence was insufficient to prove intent to distribute marijuana where the defendant possessed 323.4 grams of marijuana, two sets of portable scales, a surgical tool, rolling papers, and $356.00 in currency, since this evidence could just as easily imply possession for personal use as intent to deliver; the possession of these items together created a suspicion of intent but not an intent to deliver marijuana, and § 41-29-139 requires more than mere suspicion. Jowers v. State, 593 So. 2d 46, 1992 Miss. LEXIS 41 (Miss. 1992).

The evidence was sufficient to support a conviction of the defendant for aiding and abetting his brother in the sale of cocaine, despite the defendant's defense that he had no idea what was happening though he was present during the sale, where the defendant drove his brother to meet a confidential informant and 2 undercover narcotics agents for the purpose of making the sale of cocaine, the defendant then drove his brother to another location where he remained with the informant and the two agents while his brother went to get the cocaine, and the defendant was present when his brother returned and completed the sale. Gowdy v. State, 592 So. 2d 29, 1991 Miss. LEXIS 841 (Miss. 1991).

The evidence was sufficient to support a conviction for sale of cocaine where the case for the prosecution consisted of the testimony of an undercover agent who purchased cocaine from the defendant, a surveillance sergeant and a forensic chemist. Doby v. State, 557 So. 2d 533, 1990 Miss. LEXIS 45 (Miss. 1990).

Testimony of state witnesses, undisputed experts, who are positive from tests made by them that substance sold by defendant to undercover agent was cocaine is sufficient to support conviction for sale of cocaine notwithstanding that one expert testifies he never used 2 of tests used by other expert in determining whether or not substance is cocaine, and notwithstanding testimony of defense expert, who never examined substance at issue, that tests of state experts were inconclusive. Sanders v. State, 479 So. 2d 1097, 1985 Miss. LEXIS 2310 (Miss. 1985).

Evidence of possession of small quantities of prazepam, hash and hash oil is sufficient to support conviction for possession with intent to sell substances in light of numerous other drugs seized along with address book, cash receipt book (with reference to large money transaction), and large quantities of money. Breckenridge v. State, 472 So. 2d 373, 1985 Miss. LEXIS 2449 (Miss. 1985).

28. Insufficient evidence—possession.

Where there was no evidence that anyone knew that a trace amount of cocaine was present in defendant's pockets until the forensic examiner found it at the crime lab, the State did not prove beyond a reasonable doubt that defendant was aware of the cocaine's presence in his pockets, much less that he intentionally and consciously was in possession of it, both required elements of the crime of possession. Hudson v. State, 30 So. 3d 1199, 2010 Miss. LEXIS 160 (Miss. 2010).

As to defendant's alleged possession of a controlled substance, several students either testified or submitted written statements implicating defendant in drug activity at the subject school, but none of those students could testify to dates, and no tangible evidence of a chemically analyzed controlled substance was offered by the State at any time during the hearing. An agent for the State simply testified that the youth's descriptions of the various pills corresponded with the descriptions of several Schedule II drugs; secondly, although a number of the youths stated that defendant told them he was stealing pills and selling them, standing alone, those statements (out-of-court admissions by a child defendant), were insufficient to support an adjudication of delinquency, and the evidence failed to meet the required proof beyond a reasonable doubt standard, which was applicable to adult proceedings as well as juvenile proceedings. In the Interest of T.B., 909 So.

2d 131, 2005 Miss. App. LEXIS 563 (Miss. Ct. App. 2005), overruled in part, D.T. v. Hinds Cnty. Youth Court (In re J.T.), 188 So. 3d 1192, 2016 Miss. LEXIS 165 (Miss. 2016).

Evidence was insufficient to support a conviction for possession of methamphetamine where: (1) while on break from his employment as a black jack dealer at a casino, the defendant encountered a woman and had a conversation with her, (2) during the conversation, the defendant picked up the woman's cigarette case, reached into it, pulled out some lip balm, used it, and put it back in the case, and (3) after he returned the cigarette case to her, several security officers detained the defendant and the woman and confiscated the cigarette case, in which methamphetamine was found; the evidence was insufficient to establish either actual or constructive possession of metham-phetamine. Mauldin v. State, 750 So. 2d 564, 1999 Miss. App. LEXIS 606 (Miss. Ct. App. 1999).

Evidence was insufficient to support a conviction for possession of methamphetamine and cocaine where the only evidence which implicated the defendant was a film canister contained in a flannel shirt which was recovered from the truck that the defendant was driving at the time of an accident five hours after the accident; the physical presence of the drugs in the film canister was rendered highly suspect by the fact that five hours elapsed from the time of the accident until the discovery of the evidence and, moreover, there was no evidence in the record that linked the drugs to the defendant. Alexander v. State, 749 So. 2d 1031, 1999 Miss. LEXIS 354 (Miss. 1999).

A defendant's momentary handling of cocaine was insufficient to support a conviction for possession of cocaine where he was handed the cocaine by a friend while in the friend's car and placed it in the glove compartment at the friend's direction; the defendant's momentary handling of the cocaine under these circumstances was insufficient to support an inference of dominion and control, since he briefly handled the cocaine with explicit direction as to immediate disposition. Berry v. State, 652 So. 2d 745, 1995 Miss. LEXIS 156 (Miss. 1995).

The evidence was insufficient to establish the defendant's constructive possession of cocaine where the defendant rode in a car with a friend to the location of a drug sale, he and the friend got out of the car and into another car where the drugs were purchased, they returned to the friend's car and the friend handed him the cocaine wrapped in tissue to place in the glove compartment, and he placed the cocaine in the glove compartment at the friend's request; the evidence was not sufficient to evince that the defendant had any control over the cocaine, since there was no evidence that he owned the drugs, paid for them, or controlled them in any manner. Berry v. State, 652 So. 2d 745, 1995 Miss. LEXIS 156 (Miss. 1995).

The evidence was insufficient to support a finding that the defendant had constructive possession of crack cocaine found in a matchbox between the 2 front seats of an automobile, even though the defendant was the operator of the automobile and had had possession of the car for 15 hours, where the defendant was not the owner of the car and there were no additional incriminating circumstances. Ferrell v. State, 649 So. 2d 831, 1995 Miss. LEXIS 31 (Miss. 1995).

There was insufficient evidence to establish that a defendant possessed 31 pounds of marijuana found in a barrel, and therefore his conviction for possession of more than one kilogram of marijuana would be reversed, even though the defendant returned from an unknown location with a one-pound bag of marijuana which was packaged similarly to the bags found in the barrel and the defendant stated that he had 100 pounds of marijuana, where the defendant did not own the land on which the barrel was found and there was no evidence that the defendant exercised dominion or control over the shed which contained the barrel. Newell v. State, 590 So. 2d 1386, 1991 Miss. LEXIS 839 (Miss. 1991).

The evidence was insufficient to support a finding that the defendant had constructive possession of cocaine which was found in a truck in which the defendant was a passenger, where the State merely asserted that the defendant repeatedly looked through the truck's rear window at sheriff's officers after they turned on their blue lights, the defendant and the driver of the truck were good friends so that any contraband owned by one was more likely than not owned by both, and the truck driver's testimony that he loaned the vehicle to a friend was not given to the arresting officers and was not believable. Cunningham v. State, 583 So. 2d 960, 1991 Miss. LEXIS 448 (Miss. 1991).

The evidence was insufficient to support a finding that the defendant had actual or constructive possession of cocaine residues that were found in a trailer owned by the defendant's sister, even if the defendant was a joint occupant of the trailer. Clayton v. State, 582 So. 2d 1019, 1991 Miss. LEXIS 366 (Miss. 1991).

The evidence was insufficient to establish that the defendant knowingly and intentionally possessed marijuana found in the trunk of a car the defendant had been driving where the car belonged to the defendant's sister and the defendant denied having any knowledge of the marijuana in the trunk, and the only additional incriminating circumstance was that the defendant had a small amount of marijuana on his person at the time of the arrest. Fultz v. State, 573 So. 2d 689, 1990 Miss. LEXIS 843 (Miss. 1990).

State failed to prove possession of cocaine where the contraband was not found on the defendant's person but was found in the patrol car which was used to take the defendant and another person the the police station, the defendant testified that she had never seen the package of cocaine and that she had no idea what it was, the arresting offices admitted that neither one had seen the defendant with cocaine in her possession, and the officer who drove the patrol car admitted that he did not know where the contraband came from, how it got into his car. Campbell v. State, 566 So. 2d 475, 1990 Miss. LEXIS 455 (Miss. 1990).

Evidence of presence of defendant in former wife's house in which marijuana was found hidden at various locations, and of presence of both male and female clothes in bedroom closet and mail addressed to defendant is insufficient to establish defendant's constructive possession of marijuana where defendant and former wife had been divorced for one year and wife had been granted exclusive use and occupancy of home. Burnham v. State, 467 So. 2d 946, 1985 Miss. LEXIS 2038 (Miss. 1985).

29. —Sale or distribution or intent as to same.

Any reasonable and fair-minded juror could have found that the State proved each element of the charge of possession of cocaine with intent to distribute; accordingly, the evidence was sufficient to support the jury's guilty verdict. Hopkins v. State, 141 So. 3d 384, 2014 Miss. LEXIS 224 (Miss. 2014).

Jury's verdict convicting defendant for sale of a controlled substance was not against the overwhelming weight of the evidence, where two police officers positively identified defendant as the man who sold crack cocaine to one of the officers. Smith v. State, 936 So. 2d 1000, 2006 Miss. App. LEXIS 632 (Miss. Ct. App. 2006).

Conviction reversed where evidence was insufficient to show a recognition on the part of the two sets of conspirators that they were entering into a common plan, knowingly intending to further its common purpose to sell LSD to another person. Lee v. State, 756 So. 2d 744, 1999 Miss. LEXIS 382 (Miss. 1999).

The evidence was insufficient to support a conviction for possession of cocaine with intent to distribute where the defendant possessed one rock of crack cocaine with a street value of approximately $20, a deputy sheriff observed some type of exchange between the defendant and another individual, the defendant was in area associated with drug usage and sales, he was carrying $223.75 and an electronic pager, and he admitted in a written statement that he had been selling drugs in the past 3 weeks. Holland v. State, 656 So. 2d 1192, 1995 Miss. LEXIS 261 (Miss. 1995).

The evidence was insufficient to allow the jury to conclude that the defendant intended to distribute crack cocaine, rather than purchase the drug, even though he was in an area known for the sale of crack cocaine and was in the presence of a drug dealer with one hand extended into a car and money in the other hand, since the circumstances gave no clue as to the identity of the "seller." Hartfield v. Hartford Life & Accident Ins. Co., 656 So. 2d 104, 1995 Miss. LEXIS 297 (Miss. 1995).

The evidence was insufficient to establish that the defendant intended to distribute cocaine where, at the time of his arrest, he possessed 15 rocks of cocaine and $515 in currency, which consisted of 14 20-dollar bills, 11 10-dollar bills, 23 5-dollar bills, and 10 one-dollar bills, but there was no evidence connecting the defendant with any activity indicating a drug sale. Murray v. State, 642 So. 2d 921, 1994 Miss. LEXIS 444 (Miss. 1994).

In a prosecution for possession of marijuana with intent to sell, the evidence was insufficient for a reasonable jury to conclude beyond a reasonable doubt that the defendant had the necessary intent to sell marijuana where the marijuana confiscated weighed approximately 4 ½ ounces, $800 in cash was found with the marijuana between the mattresses in the defendant's bedroom, and there was conflicting testimony with respect to the meaning of names and numbers written on a shoe box containing drug paraphernalia and residue found in the defendant's home. Jones v. State, 635 So. 2d 884, 1994 Miss. LEXIS 202 (Miss. 1994).

In a prosecution for possession of cocaine with intent to deliver, the evidence was insufficient to establish intent to deliver where the defendant was in possession of 12 rocks of crack cocaine, and a police officer testified that a user normally did not have more than 1 or 2 rocks in his possession and that 12 rocks would yield a "4-hour high if smoked continuously," but there was nothing else connecting the defendant with the possibility that the drugs were intended for sale. Miller v. State, 634 So. 2d 127, 1994 Miss. LEXIS 136 (Miss. 1994).

Evidence that a police officer, while standing outside an apartment door, overheard a conversation between 3 people inside the apartment concerning a sale of cocaine, was insufficient to support a conviction for conspiracy to distribute the cocaine where the statements overheard by the officer were not identified as coming from any particular person. Mickel v. State, 602 So. 2d 1160, 1992 Miss. LEXIS 203 (Miss. 1992).

A defendant's possession of 11 ½ ounces of marijuana contained in 4 sandwich bags along with $861.69 in assorted denominations, without more, was insufficient evidence to sustain the defendant's conviction for possession of marijuana with intent to sell. Girley v. State, 602 So. 2d 844, 1992 Miss. LEXIS 383 (Miss. 1992).

The evidence was insufficient to support a conviction of intent to distribute cocaine where the defendant possessed a small quantity of cocaine in another's apartment from which additional cocaine was seized along with contraband identified with distribution of cocaine and crack, since the evidence only pointed to a mere suspicion of intent to distribute. Thomas v. State, 591 So. 2d 837, 1991 Miss. LEXIS 971 (Miss. 1991).

A conviction for possession of cocaine with intent to distribute would be reversed where the defendant possessed enough cocaine for 4 days' personal consumption but there were no surrounding circumstances from which an intent to distribute could be inferred. Stringfield v. State, 588 So. 2d 438, 1991 Miss. LEXIS 720 (Miss. 1991).

The evidence was insufficient to support a finding of guilty of sale of cocaine beyond a reasonable doubt, where the only witness who identified the defendant was a paid confidential informant who described the man who sold to him as being 5 feet 6 inches tall and weighing 130 pounds, though the defendant was 6 feet tall and weighed 184 pounds; the discrepancy in the informant's description generated considerable doubt, particularly since the informant described the seller as being smaller than himself, while in fact the defendant was a much larger person in terms of both height and weight. Ashford v. State, 583 So. 2d 1279, 1991 Miss. LEXIS 407 (Miss. 1991).

The evidence was insufficient to establish that the defendant intended to distribute cocaine, even though his conduct was similar to that of others who traffic in drugs and the cocaine was packaged in individual packets, since this evidence was insufficient to allow a reasonable factfinder to conclude beyond a reasonable doubt that the defendant intended to distribute the cocaine rather than keep it for his personal use. Hicks v. State, 580 So. 2d 1302, 1991 Miss. LEXIS 318 (Miss. 1991).

The evidence was insufficient for the jury to conclude beyond a reasonable doubt that the defendant intended to distribute marijuana rather than retain or purchase it for his personal use where the defendant had in his possession 4.1 grams of marijuana divided in 6 nickel bags, a narcotics officer testified that a user normally purchased only one or 2 nickel bags, the drugs possessed by the defendant were packaged in the manner normally used for sale, the defendant had $103 in cash on his person, and the defendant held the drugs in one hand and the money in the other, since this evidence gives rise to 2 reasonable but completely opposite inferences-that the defendant was either completing a purchase or attempting to make a sale. Jackson v. State, 580 So. 2d 1217, 1991 Miss. LEXIS 325 (Miss. 1991).

The evidence was insufficient to support a conviction for constructive possession of marijuana or for possession of marijuana with intent to distribute where the only proof of the defendant's guilt was that he rented a motel room and that the contraband was found in the room the day after the defendant had checked out, even though the maid who cleaned the room the day after the defendant checked out testified that a man entered the room while she was cleaning it and said he had returned to "get his stuff." Pate v. State, 557 So. 2d 1183, 1990 Miss. LEXIS 123 (Miss. 1990).

The evidence was insufficient to support a conviction for possession of a controlled substance with intent to distribute where the evidence showed that the defendant had in his possession 21 sets of what are commonly known as T's and Blues, the amount in the defendant's possession would be a week's supply for the average user but only a few days' supply for an addict, the sets were packaged individually which is the way in which they are normally packaged for sale but is also the way they are purchased for personal consumption, and no sale was proved on the date in question by the undercover agents, even though the drugs are taken intravenously but the defendant had no syringes on his person with which to take these drugs, the area in which the defendant was found was a known drug trafficking area in which the defendant had been seen many times before, and one of the arresting officers, who was experienced in the area of narcotics enforcement, testified that of the many T's and Blues related arrests he had made in the past, more suspects than not carried fewer than 20 sets. Stringer v. State, 557 So. 2d 796, 1990 Miss. LEXIS 56 (Miss. 1990).

Evidence that defendant was aware of possibility that future sale of narcotics would be made is insufficient to render defendant criminally accountable as principal in sale of substance. Clemons v. State, 482 So. 2d 1102, 1985 Miss. LEXIS 2356 (Miss. 1985).

Evidence of defendant's possession of valium in bottle containing 17 other pills and capsules is insufficient to support conviction for possession of valium with intent to distribute where defendant's physician testifies that defendant has been given prescription for valium and where other pills and capsules are antibiotics, defendant has spinal degenerative arthritis, is diabetic, has chronic bronchitis and has back problems; defendant does not need to prove that valium seized is valium prescribed by doctor. Breckenridge v. State, 472 So. 2d 373, 1985 Miss. LEXIS 2449 (Miss. 1985).

Evidence that defendant possessed 55 ¾ methaqualone tablets and 85 ½ diazepam tablets was insufficient to sustain a conviction of possession with intent to deliver the controlled substances, where there was no proof of any sale, attempted sale, or anything suggestive of any intent to deliver. Bryant v. State, 427 So. 2d 131, 1983 Miss. LEXIS 2449 (Miss. 1983).

In a prosecution for delivery of a controlled substance in violation of this section [Code 1972, § 41-29-139], it was an essential element of the offense that defendant have knowledge that he was delivering a controlled substance and that he intended to deliver a controlled substance, and the judgment was reversed and the cause remanded where the record showed that such knowledge was not proved. Applegate v. State, 301 So. 2d 853, 1974 Miss. LEXIS 1668 (Miss. 1974).

30. —Manufacture.

The uncorroborated testimony of an alleged accomplice was insufficient to support a conviction for conspiracy to manufacture marijuana where the accomplice contradicted himself concerning payments allegedly made to him by the defendant, and another witness' testimony substantially impeached that of the accomplice; although the other witness had reasons for bias and a fair-minded juror could reject his testimony as unconvincing, it could not be discarded so completely as to eliminate reasonable doubt, particularly when combined with the accomplice's self-contradictory statements. Flanagan v. State, 605 So. 2d 753, 1992 Miss. LEXIS 449 (Miss. 1992).

Evidence that the defendant owned property where marijuana plants were found growing in pots was not sufficient to support a conviction for manufacturing marijuana where there was evidence that the defendant's son had exercised dominion and control over the plants. Flurry v. State, 536 So. 2d 1340, 1988 Miss. LEXIS 604 (Miss. 1988).

In a prosecution for possession of marijuana with intent to deliver arising out of the discovery in the defendant's car of marijuana and drug paraphernalia, including a leather bag, scales and a box of plastic bags, the case would be remanded for the sentencing of defendant for possession of more than one ounce of marijuana where the evidence, both direct and circumstantial, failed to show intent, or attempt, to deliver the marijuana. Hollingsworth v. State, 392 So. 2d 515, 1981 Miss. LEXIS 1901 (Miss. 1981).

31. Best evidence.

Best evidence rule does not require that tape recording of conversation relating to marijuana sale be used to exclusion of direct testimony by undercover agent as to agent's recollection of conversation. Quinn v. State, 479 So. 2d 706, 1985 Miss. LEXIS 2283 (Miss. 1985).

Cited in: Avant v. State, 910 So. 2d 695, 2005 Miss. App. LEXIS 186 (Miss. Ct. App. 2005).

OPINIONS OF THE ATTORNEY GENERAL

Section 63-1-71(2) and Section 41-29-139(c)(2)(A) are not in conflict; report of conviction for less than one ounce of marijuana must be sent to the Bureau of Narcotics pursuant to Section 41-29-139, and, if court is unable to collect the license of person convicted, court shall also cause report of conviction to be sent to Commissioner of Public Safety, Driver Improvement Division. 1992 Miss. Op. Att'y Gen. 680.

Provisions and requirements of section, by their express terms, apply only to marijuana violations and certain records that must be maintained and periodically expunged by the Mississippi Bureau of Narcotics; provisions do not address records that local law enforcement may have. 1992 Miss. Op. Att'y Gen. 859.

RESEARCH REFERENCES

ALR.

Entrapment to commit offense with respect to narcotics law. 33 A.L.R.2d 883.

Admissibility, in prosecution for illegal sale of narcotics, of evidence of other sales. 93 A.L.R.2d 1097.

Marijuana, psilocybin, peyote or similar drugs of vegetable origin as narcotics for purposes of drug prosecution. 50 A.L.R.3d 1164.

LSD, STP, MDA, or other chemically synthesized hallucinogenic or psychedelic substances as narcotics for purposes of drug prosecution. 50 A.L.R.3d 1284.

Permitting unlawful use of narcotics in private home as criminal offense. 54 A.L.R.3d 1297.

Review for excessiveness of sentence in narcotics case. 55 A.L.R.3d 812.

Conviction of possession of illicit drugs found in premises of which defendant was in nonexclusive possession. 56 A.L.R.3d 948.

Conviction of possession of illicit drugs found in automobile of which defendant was not sole occupant. 57 A.L.R.3d 1319.

Validity and construction of statute creating presumption or inference of intent to sell from possession of specified quantity of illegal drugs. 60 A.L.R.3d 1128.

Drug addiction or related mental state as defense to criminal charge. 73 A.L.R.3d 16.

Sufficiency of prosecution proof that substance defendant is charged with possessing or selling, or otherwise unlawfully dealing in, is marijuana. 75 A.L.R.3d 717.

Validity of state statute imposing mandatory sentence or prohibiting granting of probation or suspension of sentence for narcotics offenses. 81 A.L.R.3d 1192.

Prosecutions based upon alleged illegal possession of instruments to be used in violation of narcotics laws. 92 A.L.R.3d 47.

Competency of drug addict or user to identify suspect material as narcotic or controlled substance. 95 A.L.R.3d 978.

Constitutionality of state legislation imposing criminal penalties for personal possession or use of marijuana. 96 A.L.R.3d 225.

Availability in state court of defense of entrapment where accused denies committing acts which constitute offense charged. 5 A.L.R.4th 1128.

Burden of proof as to entrapment defense-state cases. 52 A.L.R.4th 775.

Liability for discharge of at-will employee for refusal to submit to drug testing. 79 A.L.R.4th 105.

Admissibility, in criminal prosecution, of expert opinion allegedly stating whether drugs were possessed with intent to distribute – state cases. 83 A.L.R.4th 629.

Validity, construction, and effect of state statute regulating sale of counterfeit or imitation controlled substances. 84 A.L.R.4th 936.

Minimum quantity of drug required to support claim that defendant is guilty of criminal "possession" of drug under state law. 4 A.L.R.5th 1.

Entrapment as defense to charge of selling or supplying narcotics where government agents supplied narcotics to defendant and purchased them from him. 9 A.L.R.5th 464.

Validity, construction, and application of state "drug kingpin" statutes. 30 A.L.R.5th 121.

Criminality of act of directing to, or recommending, source from which illicit drugs may be purchased. 34 A.L.R.5th 125.

Propriety of search of nonoccupant visitor's belongings pursuant to warrant issued for another's premises. 51 A.L.R.5th 375.

Admissibility of evidence discovered in search of adult defendant's property or residence authorized by defendant's minor child – state cases. 51 A.L.R.5th 425.

What Constitutes "Aggravated Felony" for Which Alien Can Be Deported or Removed Under 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C. § 1227(a)(2)(A)(iii)) – Marijuana Offenses Under 8 U.S.C. § 1101(a)(43)(B). 76 A.L.R. Fed. 2d 1.

What Constitutes "Aggravated Felony" for Which Alien Can Be Deported or Removed Under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C. § 1227(a)(2)(A)(iii)) – Cocaine and Crack Cocaine Offenses Under 8 U.S.C. § 1101(a)(43)(B). 76 A.L.R. Fed. 2d 61.

What Constitutes "Aggravated Felony" for Which Alien Can Be Deported or Removed Under § 237(a)(2)(A)(iii) of the Immigration and Nationality Act (8 U.S.C. § 1227(a)(2)(A)(iii)) – Heroin Offenses Under 8 U.S.C. § 1101(a)(43)(B). 78 A.L.R. Fed. 2d 133.

What Constitutes "Aggravated Felony" for Which Aliens Can Be Deported or Removed Under § 237(a)(2)(A)(iii) of the Immigration and Nationality Act (8 U.S.C. § 1227(a)(2)(A)(iii)) – Illicit Methamphetamine Offenses Under 8 U.S.C. § 1101(a)(43)(B). 78 A.L.R. Fed. 2d 151.

What Constitutes "Aggravated Felony" for Which Alien Can Be Deported or Removed Under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C. § 1227(a)(2)(A)(iii)) – Miscellaneous or Unspecified Narcotics Offenses Under 8 U.S.C. § 1101(a)(43)(B). 79 A.L.R. Fed. 2d 335.

Validity, under Federal Constitution, of so-called "head shop" ordinances or statutes, prohibiting manufacture and sale of drug use related paraphernalia. 69 A.L.R. Fed. 15.

Construction and Application of State Drug Paraphernalia Acts. 23 A.L.R. 6th 307.

Proper venue in prosecution under 21 USCS § 846 for attempt or conspiracy to violate Comprehensive Drug Abuse Prevention and Control Act of 1970. 74 A.L.R. Fed. 669.

Propriety of instruction of jury on "conscious avoidance" of knowledge of nature of substance or transaction in prosecution for possession or distribution of drugs. 109 A.L.R. Fed. 710.

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 141 et seq.

4 Am. Jur. Proof of Facts 549, Drugs, Proof No. 1 (use of drug other than that called for in prescription).

13 Am. Jur. Proof of Facts 391, Criminal Drug Addiction and Possession, Proof No. 1 (illegal possession or use of drug).

13 Am. Jur. Proof of Facts 391, Criminal Drug Addiction and Possession, Proof No. 2 (identification of a substance as a drug-testimony of expert).

1 Am. Jur. Trials 555, Locating and Preserving Evidence in Criminal Cases, §§ 30-50.

2 Am. Jur. Trials 171, Investigating Particular Crimes, §§ 60-63.

8 Am. Jur. Trials 573, Defense of Narcotics Cases, §§ 1 et seq.

CJS.

28 C.J.S., Drugs and Narcotics §§ 263 et seq.

72 C.J.S., Poisons §§ 7 et seq.

Law Reviews.

1981 Mississippi Supreme Court Review: Criminal Law and Procedure. 52 Miss. L. J. 427, June 1982.

Practice References.

Defense of Narcotics Cases (Matthew Bender).

Smith, Prosecution and Defense of Forfeiture Cases (Matthew Bender).

§ 41-29-140. Fines and penalties; violation of Section 41-29-139.

(a) Except as otherwise authorized by the Uniform Controlled Substances Law, it is unlawful for any person to:

(1) Knowingly or intentionally receive or expend funds which he knows to be derived from the commission of a felony offense under the provisions of Section 41-29-139; or

(2) Finance or invest funds which he knows to be intended to further the commission of a felony under the provisions of Section 41-29-139.

(b) Any person who violates subsection (a) of this section is guilty of a felony and, upon conviction, may be sentenced to the custody of the State Department of Corrections for not more than five (5) years or fined not more than One Million Dollars ($1,000,000.00), or both.

HISTORY:

Laws, 1985, ch. 388, § 1, eff from and after July 1, 1985.

Cross References —

Imposition and collection of separate laboratory analysis fee in addition to any other assessments and costs imposed by statute on every individual convicted of a felony in a case where Crime Laboratory provided forensic science or laboratory services in connection with the case, see § 45-1-29.

Suspension of driving privileges of person convicted of violations of Uniform Controlled Substance Law, see § 63-1-71.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

Imposition of state assessment in addition to all other state assessments due under § 99-19-73 and all court imposed fines or other penalties for any violation of § 41-29-139, see § 99-19-73.

RESEARCH REFERENCES

ALR.

Offense of aiding and abetting illegal possession of drugs or narcotics. 47 A.L.R.3d 1239.

Proper venue in prosecution under 21 USCS § 846 for attempt or conspiracy to violate Comprehensive Drug Abuse Prevention and Control Act of 1970. 74 A.L.R. Fed. 669.

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 141 et seq.

CJS.

28 C.J.S., Drugs and Narcotics §§ 263 et seq.

Practice References.

Defense of Narcotics Cases (Matthew Bender).

Smith, Prosecution and Defense of Forfeiture Cases (Matthew Bender).

§ 41-29-141. Prohibited acts B; penalties.

It is unlawful for any person:

(1) Who is subject to Section 41-29-125 to distribute or dispense a controlled substance in violation of Section 41-29-137;

(2) Who is a registrant under Section 41-29-125 to manufacture a controlled substance not authorized by his registration, or to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

(3) To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this article;

(4) To refuse a lawful entry into any premises for any inspection authorized by this article; or

(5) Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this article for the purpose of using these substances, or which is used for keeping or selling them in violation of this article.

Any person who violates this section shall, with respect to such violation, be subject to a civil penalty payable to the State of Mississippi of not more than Twenty-five Thousand Dollars ($25,000.00).

In addition to the civil penalty provided in the preceding paragraph, any person who knowingly or intentionally violates this section shall be guilty of a crime and upon conviction thereof may be confined for a period of not more than one (1) year or fined not more than One Thousand Dollars ($1,000.00), or both.

HISTORY:

Codes, 1942, § 6831-71; Laws, 1971, ch. 521, § 21; Laws, 1972, ch. 520, § 8, eff from and after passage (approved May 19, 1972).

Cross References —

Suspension of driving privileges of person convicted of violations of Uniform Controlled Substance Law, see § 63-1-71.

JUDICIAL DECISIONS

1. In general.

Where in a single count indictment, possession and production of a controlled substance is charged conjunctively, such possession and production constitute aspects of a single transaction and the possession, having been merely incidental to the production of the substance, does not constitute a charge of a separate or distinct offense, and consequently indictment charging defendant did possess and produce marijuana was not fatally defective. Wolf v. State, 281 So. 2d 445, 1973 Miss. LEXIS 1497 (Miss. 1973).

RESEARCH REFERENCES

ALR.

Marijuana, psilocybin, peyote or similar drugs of vegetable origin as narcotics for purposes of drug prosecution. 50 A.L.R.3d 1164.

LSD, STP, MDA, or other chemically synthesized hallucinogenic or psychedelic substances as narcotics for purposes of drug prosecution. 50 A.L.R.3d 1284.

Permitting unlawful use of narcotics in private home as criminal offense. 54 A.L.R.3d 1297.

Validity of state statute imposing mandatory sentence or prohibiting granting of probation or suspension of sentence for narcotics offenses. 81 A.L.R.3d 1192.

Validity, construction, and effect of state statute regulating sale of counterfeit or imitation controlled substances. 84 A.L.R.4th 936.

State law criminal liability of licensed physician for prescribing or dispensing drug or similar controlled substance. 13 A.L.R.5th 1.

What Constitutes "Aggravated Felony" for Which Alien Can Be Deported or Removed Under 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C. § 1227(a)(2)(A)(iii)) – Marijuana Offenses Under 8 U.S.C. § 1101(a)(43)(B). 76 A.L.R. Fed. 2d 1.

What Constitutes "Aggravated Felony" for Which Alien Can Be Deported or Removed Under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C. § 1227(a)(2)(A)(iii)) – Miscellaneous or Unspecified Narcotics Offenses Under 8 U.S.C. § 1101(a)(43)(B). 79 A.L.R. Fed. 2d 335.

Proper venue in prosecution under 21 USCS § 846 for attempt or conspiracy to violate Comprehensive Drug Abuse Prevention and Control Act of 1970. 74 A.L.R. Fed. 669.

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 141 et seq.

13 Am. Jur. Proof of Facts 391, Criminal Drug Addiction and Possession, Proof No. 1 (illegal possession or use of drug).

13 Am. Jur. Proof of Facts 391, Criminal Drug Addiction and Possession, Proof No. 2 (identification of a substance as a drug-testimony of expert).

1 Am. Jur. Trials 555, Locating and Preserving Evidence in Criminal Cases, §§ 30-50.

2 Am. Jur. Trials 171, Investigating Particular Crimes, §§ 60-63.

8 Am. Jur. Trials 573, Defense of Narcotics Cases, §§ 1 et seq.

CJS.

72 C.J.S., Poisons §§ 7 et seq.

§ 41-29-142. Enhanced penalties for sale, etc. of controlled substances in, on or within specified distances of schools, churches and certain other buildings.

(1) Except as provided in subsection (f) of Section 41-29-139 or in subsection (2) of this section, any person who violates or conspires to violate Section 41-29-139(a)(1), Mississippi Code of 1972, by selling, bartering, transferring, manufacturing, distributing, dispensing or possessing with intent to sell, barter, transfer, manufacture, distribute or dispense, a controlled substance, in or on, or within one thousand five hundred (1,500) feet of, a building or outbuilding which is all or part of a public or private elementary, vocational or secondary school, or any church, public park, ballpark, public gymnasium, youth center or movie theater or within one thousand (1,000) feet of, the real property comprising such public or private elementary, vocational or secondary school, or any church, public park, ballpark, public gymnasium, youth center or movie theater shall, upon conviction thereof, be punished by the term of imprisonment or a fine, or both, of that authorized by Section 41-29-139(b) and, in the discretion of the court, may be punished by a term of imprisonment or a fine, or both, of up to twice that authorized by Section 41-29-139(b).

(2) Except as otherwise provided in subsection (f) of Section 41-29-139, any person who violates or conspires to violate Section 41-29-139(a)(1), Mississippi Code of 1972, by selling, bartering, transferring, manufacturing, distributing, dispensing or possessing with intent to sell, barter, transfer, manufacture, distribute or dispense, a controlled substance, in or on, or within one thousand five hundred (1,500) feet of, a building or outbuilding which is all or part of a public or private elementary, vocational or secondary school, or any church, public park, ballpark, public gymnasium, youth center or movie theater or within one thousand (1,000) feet of, the real property comprising such public or private elementary, vocational or secondary school, or any church, public park, ballpark, public gymnasium, youth center or movie

theater after a prior conviction under subsection (1) of this section has become final, shall, upon conviction thereof, be punished by a term of imprisonment of not less than three (3) years and not more than life, and in the discretion of the court, may be punished by a term of imprisonment of up to three (3) times that authorized by Section 41-29-139(b), for a first offense, or a fine of up to three (3) times that authorized by Section 41-29-139(b), for a first offense, or both.

HISTORY:

Laws, 1989, ch. 569, § 1; Laws, 1992, ch. 405, § 1; Laws, 1993, ch. 405, § 1, eff from and after passage (approved March 12, 1993).

Cross References —

Penalties for distribution to persons under twenty-one years of age, see § 41-29-145.

Penalties for second and subsequent offenses, see § 41-29-147.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Indictment.
3. Findings by court.
4. Sufficient evidence.
5. Sentence.

1. In general.

Based upon defendant's plea, the trial court had the authority to sentence defendant up to sixty years in the custody of the Mississippi Department of Corrections (MDOC); the trial court sentenced defendant to fifteen years in the custody of the MDOC, with six years to serve, and the remaining nine years suspended, and as such, defendant's sentence was within the minimum and maximum sentences set forth by statute. Sanchez v. State, 2 So. 3d 780, 2009 Miss. App. LEXIS 65 (Miss. Ct. App. 2009).

Court rejected defendant's claim that the enhanced 10-year sentence imposed pursuant to Miss. Code Ann. § 41-29-142 upon his conviction for selling cocaine within 1,500 feet of a church in violation of Miss. Code Ann. § 41-29-139 was excessive. A pre-sentencing report was included in the record and the 10-year sentence was considerably less than the 30-year maximum provided in § 41-29-139, and defendant's sentence was well within the enhancement guidelines provided in Miss. Code Ann. § 41-29-142, which allowed a sentence of up to three times the sentence imposed under Miss. Code Ann. § 41-29-139. Moore v. State, 909 So. 2d 77, 2005 Miss. App. LEXIS 288 (Miss. Ct. App. 2005).

Defendant's sentence was not excessive, nor did it exceed the bounds of the penalty allowed under Miss. Code Ann. § 41-29-142; because the sentence was within the guidelines of the statute, it was not disproportionate to the crime charged, such that the appellate court would not disturb the sentence. Hodges v. State, 906 So. 2d 23, 2004 Miss. App. LEXIS 1029 (Miss. Ct. App. 2004), cert. dismissed, 904 So. 2d 184, 2005 Miss. LEXIS 348 (Miss. 2005).

Where defendant gave cocaine to another, who sold the cocaine to a buyer, defendant was properly convicted of selling cocaine, a Schedule II controlled substance, in violation of Miss. Code Ann. §§ 41-29-139(a)(1) and 41-29-142(1) because defendant's act was a constructive transfer. Pratt v. State, 870 So. 2d 1241, 2004 Miss. App. LEXIS 273 (Miss. Ct. App. 2004).

Evidence was sufficient to convict defendant for sale of cocaine within fifteen hundred feet of a church; defendant was identified by the undercover officer as one of the persons who sold the cocaine, and two law enforcement officers testified that the drug transaction had occurred within fifteen hundred feet of a church. Chambers v. State, 878 So. 2d 153, 2004 Miss. App. LEXIS 42 (Miss. Ct. App.), cert. denied, 878 So. 2d 67, 2004 Miss. LEXIS 915 (Miss. 2004).

This section requires proof of the presence of a building or an outbuilding. Coleman v. State, 1999 Miss. App. LEXIS 488 (Miss. Ct. App. July 27, 1999), aff'd, 786 So. 2d 397, 2001 Miss. LEXIS 149 (Miss. 2001).

2. Indictment.

Although appellant alleged that his original indictment contained a defect because it only referenced the enhancement statute, Miss. Code Ann. § 41-29-142, not Miss. Code Ann. § 41-29-139, under which he ultimately pleaded guilty, it was apparent that the reason for the different statute was a result of appellant's plea agreement with the State in order to receive the more lenient sentence available under § 41-29-139; consequently, there was no error in the disparity between the indictment and sentencing order. Regardless, appellant waived any claim of defect with his entry of a guilty plea. Graham v. State, 2010 Miss. App. LEXIS 116 (Miss. Ct. App. Mar. 9, 2010), op. withdrawn, sub. op., 85 So. 3d 860, 2011 Miss. App. LEXIS 33 (Miss. Ct. App. 2011).

Where defedant was charged with possession of a controlled substance with the intent to sell or distribute under Miss. Code Ann. § 41-29-139(a)(1), no prejudicial error occurred when the State was permitted to amend the indictment to allege that the crime was committed within 1,500 feet of a day care center instead of a park because the amendment did not change the crime for which defendant was charged but merely amended the allegations related to the enhancement provisions of Miss. Code Ann. § 41-29-142 to comport with the evidence that would be presented at trial. Further, because the indictment was amended six months before trial commenced, the defense was given sufficient notice to prepare and adjust their defense accordingly. Tarver v. State, 15 So. 3d 446, 2009 Miss. App. LEXIS 40 (Miss. Ct. App.), cert. denied, 15 So. 3d 426, 2009 Miss. LEXIS 398 (Miss. 2009).

The fact that the indictment charged the defendant with the sale of marijuana within 1,500, rather than 1,000, feet of a public park caused no prejudice to the defendant and, therefore, did not require the reversal of his conviction where the sale actually occurred inside a public park. Coleman v. State, 786 So. 2d 397, 2001 Miss. LEXIS 149 (Miss. 2001).

An indictment gave the defendant sufficient notice that he was being charged under this section for the sale of drugs in or on or within a public park and that if found guilty he could be subjected to an enhanced sentence, notwithstanding the contention that the indictment did not mention a building or outbuilding, but only charged the defendant with the sale of marijuana within 1500 feet of a named park. Coleman v. State, 1999 Miss. App. LEXIS 488 (Miss. Ct. App. July 27, 1999), aff'd, 786 So. 2d 397, 2001 Miss. LEXIS 149 (Miss. 2001).

3. Findings by court.

Although a conviction for the sale of a controlled substance, under Miss. Code Ann. § 41-29-139, was affirmed, defendant's rights under the Sixth Amendment were violated because he did not receive a jury hearing on the issue of a thirty-year sentence enhancement, pursuant to Miss. Code Ann. § 41-29-142, for selling a controlled substance within 1,500 feet of a church. Brown v. State, 995 So. 2d 698, 2008 Miss. LEXIS 586 (Miss. 2008).

Where the record revealed no attempt by the trial judge to explain his reasons for imposing a 60 year sentence under the statute, and the judge denied the defendant's attempts to submit a presentencing report, the case was remanded for consideration of sentence. Green v. State, 762 So. 2d 810, 2000 Miss. App. LEXIS 300 (Miss. Ct. App. 2000).

The defendant's sentence would be reversed and remanded to allow for further explanation by the trial court where the defendant was sentenced to the 60 year maximum sentence and the trial judge's reasons were unclear concerning whether egregious circumstances existed to justify such a sentence. White v. State, 1999 Miss. App. LEXIS 535 (Miss. Ct. App. Aug. 17, 1999), op. withdrawn, sub. op., 761 So. 2d 221, 2000 Miss. App. LEXIS 97 (Miss. Ct. App. 2000).

4. Sufficient evidence.

Evidence was sufficient to support defendant's conviction of selling, transferring, or delivering cocaine within 1,500 feet of a church in violation of Miss. Code Ann. § 41-29-142(1) (Rev. 2005); where a police officer testified the sale was 147 feet from church property, but the defendant testified the sale took place on a different street outside the 1,500-foot radius, it was the role of the jury to judge the credibility of conflicting witnesses . Perkins v. State, 37 So. 3d 656, 2009 Miss. App. LEXIS 854 (Miss. Ct. App. 2009), cert. denied, 36 So. 3d 455, 2010 Miss. LEXIS 321 (Miss. 2010).

Defendant's sentence after being convicted for possession of 73.7 grams of marijuana with intent to distribute as a habitual offender was proper pursuant to Miss. Code Ann. §§ 41-29-142(1) and 99-19-81 where the circuit court was required by statute to sentence him to 40 years imprisonment without the possibility of parole and/or a $60,000 fine, which is exactly what the circuit court did. Foster v. State, 928 So. 2d 873, 2005 Miss. App. LEXIS 733 (Miss. Ct. App. 2005), cert. denied, 929 So. 2d 923, 2006 Miss. LEXIS 309 (Miss. 2006).

Defendant's conviction for the sale of cocaine within 1,500 feet of a church in violation of Miss. Code Ann. §§ 41-29-139 and 41-29-142 was proper where the State offered sufficient testimony from two officers and an employee of the Mississippi Crime Lab to satisfy the requirement of Miss. R. Evid. 901(a) for establishing a proper chain of custody for admission of the cocaine at trial. Johnson v. State, 904 So. 2d 162, 2005 Miss. LEXIS 380 (Miss. 2005).

5. Sentence.

Circuit court properly dismissed petitioner's motion for postconviction relief because petitioner was fully advised that his plea included the enhancement, and petitioner agreed on the record to the State's recitation of all of the necessary elements of the enhancement. Funchess v. State, 202 So. 3d 1286, 2016 Miss. App. LEXIS 393 (Miss. Ct. App. 2016).

State failed to prove defendant's sale of cocaine to a confidential informant occurred within 1,500 feet of a public park because the record contained no evidence establishing that the real property where the sale occurred was in fact a public park; however, the State's failure had no effect on defendant's sentence because the trial judge did not use park proximity to increase defendant's penalty beyond the statutory maximum, but rather, the determining sentencing factor was defendant's forty-two prior misdemeanor convictions, and defendant's sentence was well below the general statutory maximum of thirty years listed in Miss. Code Ann. § 41-29-139(b)(1). Pearson v. State, 64 So. 3d 569, 2011 Miss. App. LEXIS 261 (Miss. Ct. App. 2011).

Although appellant's sentence was a violation of Miss. Code Ann. § 47-5-1003(1), this did not constitute reversible error; appellant did not suffer any prejudice by the imposition of house arrest and where a defendant is given an illegal sentence that is more favorable than what the legal sentence would have been then he/she is not later entitled to relief through a post-conviction action. Graham v. State, 2010 Miss. App. LEXIS 116 (Miss. Ct. App. Mar. 9, 2010), op. withdrawn, sub. op., 85 So. 3d 860, 2011 Miss. App. LEXIS 33 (Miss. Ct. App. 2011).

After conviction on a charge of possession of cocaine in an amount greater than thirty grams, within 1,500 feet of a church, with intent to distribute, defendant's postconviction review motion was correctly denied because no conflict existed between the circuit court's oral pronouncement of the sentence and its written order. Both clearly reflected that defendant was sentenced to a term of 30 years, followed by five years of post-release supervision, for violating Miss. Code Ann. §§ 41-29-139 and 41-29-142. Chandler v. State, 27 So. 3d 1199, 2010 Miss. App. LEXIS 9 (Miss. Ct. App. 2010).

RESEARCH REFERENCES

ALR.

Construction and Application of State Drug Paraphernalia Acts. 23 A.L.R.6th 679.

What Constitutes "Aggravated Felony" for Which Alien Can Be Deported or Removed Under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C. § 1227(a)(2)(A)(iii)) – Marijuana Offenses Under 8 U.S.C. § 1101(a)(43)(B). 76 A.L.R. Fed. 2d 1.

What Constitutes "Aggravated Felony" for Which Alien Can Be Deported or Removed Under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C. § 1227(a)(2)(A)(iii)) – Cocaine and Crack Cocaine Offenses Under 8 U.S.C. § 1101(a)(43)(B). 76 A.L.R. Fed. 2d 61.

What Constitutes "Aggravated Felony" for Which Alien Can Be Deported or Removed Under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C. § 1227(a)(2)(A)(iii)) – Miscellaneous or Unspecified Narcotics Offenses Under 8 U.S.C. § 1101(a)(43)(B). 79 A.L.R. Fed. 2d 335.

§ 41-29-143. Prohibited acts C; penalties.

It is unlawful for any person knowingly or intentionally:

(1) To distribute as a registrant a controlled substance classified in Schedule I or II, as set out in Sections 41-29-113 and 41-29-115, except pursuant to an order form as required by Section 41-29-135;

(2) To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person.

(3) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this article, or any record required to be kept by this article; or

(4) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

Any person who violates this section is guilty of a crime and upon conviction may be confined for not more than one (1) year or fined not more than One Thousand Dollars ($1,000.00) or both.

HISTORY:

Codes, 1942, § 6831-72; Laws, 1971, ch. 521, § 22; Laws, 1977, ch. 375. § 1, eff from and after July 1, 1977.

Cross References —

Suspension of driving privileges of person convicted of violations of Uniform Controlled Substance Law, see § 63-1-71.

JUDICIAL DECISIONS

1. In general.

Where in a single count indictment, possession and production of a controlled substance is charged conjunctively, such possession and production constitute aspects of a single transaction and the possession, having been merely incidental to the production of the substance, does not constitute a charge of a separate or distinct offense, and consequently indictment charging defendant did possess and produce marijuana was not fatally defective. Wolf v. State, 281 So. 2d 445, 1973 Miss. LEXIS 1497 (Miss. 1973).

RESEARCH REFERENCES

ALR.

Marijuana, psilocybin, peyote or similar drugs of vegetable origin as narcotics for purposes of drug prosecution. 50 A.L.R.3d 1164.

LSD, STP, MDA, or other chemically synthesized hallucinogenic or psychedelic substances as narcotics for purposes of drug prosecution. 50 A.L.R.3d 1284.

Permitting unlawful use of narcotics in private home as criminal offense. 54 A.L.R.3d 1297.

Validity of state statute imposing mandatory sentence or prohibiting granting of probation or suspension of sentence for narcotics offenses. 81 A.L.R.3d 1192.

Admissibility, in criminal prosecution, of expert opinion allegedly stating whether drugs were possessed with intent to distribute – state cases. 83 A.L.R.4th 629.

What Constitutes "Aggravated Felony" for Which Alien Can Be Deported or Removed Under 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C. § 1227(a)(2)(A)(iii)) – Marijuana Offenses Under 8 U.S.C. § 1101(a)(43)(B). 76 A.L.R. Fed. 2d 1.

What Constitutes "Aggravated Felony" for Which Alien Can Be Deported or Removed Under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C. § 1227(a)(2)(A)(iii)) – Miscellaneous or Unspecified Narcotics Offenses Under 8 U.S.C. § 1101(a)(43)(B). 79 A.L.R. Fed. 2d 335.

Proper venue in prosecution under 21 USCS § 846 for attempt or conspiracy to violate Comprehensive Drug Abuse Prevention and Control Act of 1970. 74 A.L.R. Fed. 669.

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 141 et seq.

13 Am. Jur. Proof of Facts 391, Criminal Drug Addiction and Possession, Proof No. 1 (illegal possession or use of drug).

13 Am. Jur. Proof of Facts 391, Criminal Drug Addiction and Possession, Proof No. 2 (identification of a substance as a drug-testimony of expert).

1 Am. Jur. Trials 555, Locating and Preserving Evidence in Criminal Cases, §§ 30-50.

2 Am. Jur. Trials 171, Investigating Particular Crimes, §§ 60-63.

8 Am. Jur. Trials 573, Defense of Narcotics Cases, §§ 1 et seq.

CJS.

72 C.J.S., Poisons §§ 7 et seq.

Practice References.

Defense of Narcotics Cases (Matthew Bender).

Smith, Prosecution and Defense of Forfeiture Cases.

§ 41-29-144. Acquiring or obtaining possession of controlled substance, legend drug or prescription by misrepresentation, fraud and the like; penalty.

(1) It is unlawful for any person knowingly or intentionally to acquire or

obtain possession or attempt to acquire or obtain possession of a controlled substance or a legend drug by larceny, embezzlement, misrepresentation, fraud, forgery, deception or subterfuge.

(2) It is unlawful for any person knowingly or intentionally to possess, sell, deliver, transfer or attempt to possess, sell, deliver or transfer a false, fraudulent or forged prescription of a practitioner.

(3) Any person who violates this section is guilty of a crime and upon conviction shall be confined for not less than one (1) year nor more than five (5) years and fined not more than One Thousand Dollars ($1,000.00), or both.

HISTORY:

Laws, 1977, ch. 375, § 2; Laws, 1980, ch. 336; Laws, 2012, ch. 430, § 1, eff from and after July 1, 2012.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Evidence held sufficient.
3. Jury instructions.

1. In general.

In defendant's trial for selling crack cocaine, the trial judge did not err in allowing the clearly spontaneous, unprovoked, and unsolicited comment of defendant while watching a videotape of the transaction at the police station, the undercover officer's testimony, that of the monitoring officer, and the physical evidence in conjunction with the videotape all of which showed that defendant's conviction was not against the overwhelming weight of the evidence. Boose v. State, 851 So. 2d 391, 2003 Miss. App. LEXIS 382 (Miss. Ct. App. 2003).

Trial judge's questioning of circuit clerk established that clerk had complied, or substantially complied, with statute with respect to random selection of jurors to try defendant charged with attempting to obtain controlled substance by misrepresentation or fraud. Griffin v. State, 494 So. 2d 376, 1986 Miss. LEXIS 2651 (Miss. 1986).

At trial of one charged with attempting to obtain a controlled substance by misrepresentation or fraud, the lower court did not abuse its discretion in denying defendant's motion for a subpoena duces tecum, returnable instanter, directed to a doctor who admitted, on cross-examination, that he kept an informal record of medication prescribed to persons not admitted to hospital. Griffin v. State, 494 So. 2d 376, 1986 Miss. LEXIS 2651 (Miss. 1986).

At defendant's trial on charge of attempting to obtain controlled substance by misrepresentation or fraud, remark of prosecutor, made during closing agreement, that defendant could have called handwriting experts as witnesses did not require a mistrial. Griffin v. State, 494 So. 2d 376, 1986 Miss. LEXIS 2651 (Miss. 1986).

At defendant's trial on charge of attempting to obtain controlled substance by misrepresentation or fraud, lower court did not err in failing to give defendant's instructions on testimony by witness, who testifies under plea bargain agreement, and accomplice testimony, where the record failed to show any plea bargain, and accomplice testimony was covered in an instruction given by the court. Griffin v. State, 494 So. 2d 376, 1986 Miss. LEXIS 2651 (Miss. 1986).

2. Evidence held sufficient.

Weight and sufficiency of the evidence supported defendant's conviction for obtaining a controlled substance by fraud; the evidence presented at trial revealed that defendant had made a call to a pharmacist pretending to be from a doctor's office, ordered a controlled substance, and later picked up the prescription, and the doctor testified that defendant had contacted her office requesting a refill of Lorcet and that her office had denied defendant's request. Irons v. State, 886 So. 2d 726, 2004 Miss. App. LEXIS 277 (Miss. Ct. App.), cert. denied, 887 So. 2d 183, 2004 Miss. LEXIS 1380 (Miss. 2004).

3. Jury instructions.

Instruction regarding defendant aiding or assisting another in the offense was proper because it explained that an aider and abetter was deemed under Mississippi law to be a principal to the offense of prescription forgery under Miss. Code Ann. § 41-29-144(2), and the jury instructions, when read together, appropriately informed the jury of the applicable law. Rushing v. State, 911 So. 2d 526, 2005 Miss. LEXIS 612 (Miss. 2005).

OPINIONS OF THE ATTORNEY GENERAL

A conviction of prescription forgery does not disqualify one as a registered voter. 2000 Miss. Op. Att'y Gen. 169.

RESEARCH REFERENCES

ALR.

Burden of proof as to entrapment defense – state cases. 52 A.L.R.4th 775.

Admissibility, in criminal prosecution, of expert opinion allegedly stating whether drugs were possessed with intent to distribute – state cases. 83 A.L.R.4th 629.

Minimum quantity of drug required to support claim that defendant is guilty of criminal "possession" of drug under state law. 4 A.L.R.5th 1.

What Constitutes "Aggravated Felony" for Which Alien Can Be Deported or Removed Under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C. § 1227(a)(2)(A)(iii)) – Cocaine and Crack Cocaine Offenses Under 8 U.S.C. § 1101(a)(43)(B). 76 A.L.R. Fed. 2d 61.

What Constitutes "Aggravated Felony" for Which Alien Can Be Deported or Removed Under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C. § 1227(a)(2)(A)(iii)) – Miscellaneous or Unspecified Narcotics Offenses Under 8 U.S.C. § 1101(a)(43)(B). 79 A.L.R. Fed. 2d 335.

Proper venue in prosecution under 21 USCS § 846 for attempt or conspiracy to violate Comprehensive Drug Abuse Prevention and Control Act of 1970. 74 A.L.R. Fed. 669.

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 141 et seq.

13 Am. Jur. Proof of Facts 391, Criminal Drug Addiction and Possession, Proof No. 1 (illegal possession or use of drug).

13 Am. Jur. Proof of Facts 391, Criminal Drug Addiction and Possession, Proof No. 2 (identification of a substance as a drug-testimony of expert).

1 Am. Jur. Trials 555, Locating and Preserving Evidence in Criminal Cases, §§ 30-50.

2 Am. Jur. Trials 171, Investigating Particular Crimes, §§ 60-63.

8 Am. Jur. Trials 573, Defense of Narcotics Cases, §§ 1 et seq.

CJS.

28 C.J.S., Drugs and Narcotics § 269.

72 C.J.S., Poisons §§ 7 et seq.

§ 41-29-145. Distribution to persons under age twenty-one.

Any person twenty-one (21) years of age or over who violates subsections (a) and (b) of Section 41-29-139 with reference to a controlled substance listed in Schedules I, II, III, IV and V as set out in Sections 41-29-113 through 41-29-121, inclusive, to a person under twenty-one (21) years of age may be punished by the fine authorized by Section 41-29-139, or by a term of imprisonment or confinement up to twice that authorized by said Section 41-29-139, or both, or he may be punished as provided in Section 41-29-142.

HISTORY:

Codes, 1942, § 6831-74; Laws, 1971, ch. 521, § 24; Laws, 1972, ch. 250, § 9; Laws, 1981, ch. 502, § 6; Laws, 1989, ch. 569, § 3, eff from and after July 1, 1989.

Cross References —

Prohibition of person convicted of crimes affecting children or other violent crimes from being licensed as foster parent or a foster home, see § 43-15-6.

RESEARCH REFERENCES

ALR.

Marijuana, psilocybin, peyote or similar drugs of vegetable origin as narcotics for purposes of drug prosecution. 50 A.L.R.3d 1164.

LSD, STP, MDA, or other chemically synthesized hallucinogenic or psychedelic substances as narcotics for purposes of drug prosecution. 50 A.L.R.3d 1284.

Permitting unlawful use of narcotics in private home as criminal offense. 54 A.L.R.3d 1297.

Burden of proof as to entrapment defense-state cases. 52 A.L.R.4th 775.

Admissibility, in criminal prosecution, of expert opinion allegedly stating whether drugs were possessed with intent to distribute-state cases. 83 A.L.R.4th 629.

What Constitutes "Aggravated Felony" for Which Alien Can Be Deported or Removed Under 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C. § 1227(a)(2)(A)(iii)) – Marijuana Offenses Under 8 U.S.C. § 1101(a)(43)(B). 76 A.L.R. Fed. 2d 1.

What Constitutes "Aggravated Felony" for Which Alien Can Be Deported or Removed Under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C. § 1227(a)(2)(A)(iii)) – Miscellaneous or Unspecified Narcotics Offenses Under 8 U.S.C. § 1101(a)(43)(B). 79 A.L.R. Fed. 2d 335.

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 179, 180.

4 Am. Jur. Proof of Facts 549, Drugs, Proof No. 1 (use of drug other than that called for in prescription).

13 Am. Jur. Proof of Facts 391, Criminal Drug Addiction and Possession, Proof No. 1 (illegal possession or use of drug).

13 Am. Jur. Proof of Facts 391, Criminal Drug Addiction and Possession, Proof No. 2 (identification of a substance as a drug-testimony of expert).

CJS.

28 C.J.S., Drugs and Narcotics § 266.

§ 41-29-146. False representation of prescription or legend drug; penalty.

(1) It shall be unlawful for any person to sell, produce, manufacture or possess with the intent to sell, produce, manufacture, distribute or dispense any substance which is falsely represented to be a prescription or legend drug or a controlled substance.

(2) The provisions of this section shall not apply to a law enforcement officer acting in the course and scope of his employment or to a medical practitioner, pharmacist or other person authorized to dispense or administer controlled substances.

(3) Any person who violates this section shall, upon conviction, be guilty of a felony and may be punished by confinement in the custody of the Department of Corrections for not more than five (5) years or by a fine of not more than Five Thousand Dollars ($5,000.00), or both.

HISTORY:

Laws, 1982, ch. 415; Laws, 2009, ch. 532, § 1; Laws, 2012, ch. 424, § 1, eff from and after July 1, 2012.

Cross References —

Imposition and collection of separate laboratory analysis fee in addition to any other assessments and costs imposed by statute on every individual convicted of a felony in a case where Crime Laboratory provided forensic science or laboratory services in connection with the case, see § 45-1-29.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

JUDICIAL DECISIONS

1. Jury instructions.

Only evidence defendant offered in support of his theory of defense was police officer's testimony that he thought the substance defendant sold him was a "dummy" piece of cocaine and was not sufficient to support an instruction on a lesser-included charge of false representation of a controlled substance under Miss. Code Ann. § 41-29-146. Green v. State, 2002 Miss. App. LEXIS 497 (Miss. Ct. App. Sept. 10, 2002), op. withdrawn, sub. op., 856 So. 2d 396, 2003 Miss. App. LEXIS 233 (Miss. Ct. App. 2003).

Because proof of defendant's guilt of the elements for sale of a controlled substance in violation of Miss. Code Ann. § 41-29-139 would not constitute proof of the elements of false representation in violation of Miss. Code Ann. § 41-29-146, a lesser-included offense jury instruction was not justified. Green v. State, 856 So. 2d 396, 2003 Miss. App. LEXIS 233 (Miss. Ct. App. 2003), rev'd, in part, 884 So. 2d 733, 2004 Miss. LEXIS 714 (Miss. 2004).

RESEARCH REFERENCES

ALR.

Validity, construction, and effect of state statute regulating sale of counterfeit or imitation controlled substances. 84 A.L.R.4th 936.

What Constitutes "Aggravated Felony" for Which Alien Can Be Deported or Removed Under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C. § 1227(a)(2)(A)(iii)) – Cocaine and Crack Cocaine Offenses Under 8 U.S.C. § 1101(a)(43)(B). 76 A.L.R. Fed. 2d 61.

What Constitutes "Aggravated Felony" for Which Alien Can Be Deported or Removed Under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C. § 1227(a)(2)(A)(iii)) – Miscellaneous or Unspecified Narcotics Offenses Under 8 U.S.C. § 1101(a)(43)(B). 79 A.L.R. Fed. 2d 335.

§ 41-29-147. Second and subsequent offenses.

Except as otherwise provided in Section 41-29-142, any person convicted of a second or subsequent offense under this article may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

For purposes of this section, an offense is considered a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this article or under any statute of the United States or of any state relating to narcotic drugs, marihuana, depressant, stimulant or hallucinogenic drugs.

HISTORY:

Codes, 1942, § 6831-74; Laws, 1971, ch. 521, § 24; Laws, 1972, ch. 520, § 9; Laws, 1989, ch. 569, § 4, eff from and after July 1, 1989.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Sentence.
3. Sufficient evidence.

1. In general.

Trial court did not err in finding that the prior conviction and a police officer's testimony were admissible to show defendant's intent and a common scheme or plan because defendant was eligible for enhanced sentencing as a subsequent drug offender, the trial court addressed the prior-conviction evidence, conducted the proper balancing test, and gave the jury a limiting instruction, the evidence of defendant's guilt was extensive, and the officer did not go into detail about her prior encounter with defendant, but simply stated that she knew him because she previously encountered him at the home where the transaction took place. Pritchett v. State, 201 So. 3d 1095, 2016 Miss. App. LEXIS 620 (Miss. Ct. App. 2016).

Circuit court erred in granting the State's motion to amend the indictment to charge defendant as a recidivist because defendant was not given proper notice in advance of trial of the State's intent to seek enhanced punishment as a subsequent drug offender; the State did not offer the specific amendment to charge him as a subsequent drug offender, and defendant was first apprised of that enhancement at his sentencing hearing. Williams v. State, 131 So. 3d 1174, 2014 Miss. LEXIS 102 (Miss. 2014).

Defendant, who was convicted as a subsequent drug offender, was properly denied jury instructions on the theory of constructive possession because, although the instructions were an accurate expression of the law, the record revealed that there was a lack of evidence supporting such an instruction. Watts v. State, 974 So. 2d 940, 2008 Miss. App. LEXIS 67 (Miss. Ct. App. 2008).

Double jeopardy and collateral estoppel did not preclude the State from charging defendant with possession of cocaine, enhanced as a subsequent drug offender under Miss. Code Ann. § 41-29-147, which was the offense that was the basis for an unsuccessful petition to revoke his probation, because there are different issues and burdens of proof involved in a revocation hearing and a trial on the indictment. A revocation hearing is conducted to enforce the court's order imposing conditions on a defendant under a suspended sentence, and the issue to be determined at trial on the indictment is whether the State has proven beyond a reasonable doubt the elements of the charge; therefore, collateral estoppel does not apply. Oliver v. State, 922 So. 2d 36, 2006 Miss. App. LEXIS 112 (Miss. Ct. App. 2006).

Once the jury had resolved any differences in the evidence, the trial court and appellate court were obligated to give substantial deference to the jury's decision; the jury chose to believe the testimony of the witnesses implicating defendant in the crime, their credibility was not impeached such that no rational juror could possibly accept their statements as true. Forrest v. State, 876 So. 2d 400, 2003 Miss. App. LEXIS 939 (Miss. Ct. App. 2003).

Appellate court found that Miss. Code Ann. § 41-29-147, the statute under which the defendant was sentenced, was constitutional. Cotten v. State, 817 So. 2d 639, 2002 Miss. App. LEXIS 303 (Miss. Ct. App. 2002).

A 60-year sentence for a conviction of sale of cocaine did not violate the Eighth Amendment's prohibition against cruel and unusual punishment, even though the defendant was convicted of selling only a small amount of cocaine, where the defendant was given a 30-year sentence pursuant to § 41-29-139(b)(1) for his conviction and the sentence was then doubled pursuant to § 41-29-147 because the defendant had previously been convicted of possession of marijuana, since the sentence was within the statutory guidelines and the legislature has called for stiff penalties for drug offenders as a matter of public policy. Campbell v. Campbell, 618 So. 2d 116, 1993 Miss. LEXIS 200 (Miss. 1993).

In order for the sentence-doubling provision of § 41-29-147 (which authorizes doubling of a sentence for a second or subsequent offense under the Uniform Controlled Substance Act) to be applicable, the indictment need not recite that the prior convictions were had pursuant to the act since that statute by its own terms is applicable "if, prior to his conviction of the offense, the offender has at any time been convicted under this article or under any statute of the United States or of any state relating to narcotic drugs." Jones v. State, 523 So. 2d 957, 1988 Miss. LEXIS 15 (Miss. 1988).

For purposes of § 41-29-147, a sentencing judge may consider prior convictions even though the indictment does not state the prior convictions. Burns v. State, 344 So. 2d 1189, 1977 Miss. LEXIS 2455 (Miss. 1977).

Indictment charging sale of drugs did not violate prohibition against double jeopardy by including the information that the defendant had been previously convicted on a separate charge since, in order for punishment to be enhanced for a second conviction, an indictment authorizing enhanced punishment must include both the principal charge and a charge of the previous convictions. Ellis v. State, 326 So. 2d 466, 1976 Miss. LEXIS 1739 (Miss. 1976).

Where the indictment failed to set forth the jurisdiction in which the previous convictions were obtained and the nature or description of the offenses constituting the previous convictions, it was defective in its attempt to charge the defendant with previous convictions and the trial court erred when it inflicted enhanced punishment under this section; these defects were not waived even though the defendant failed to demur to the indictment before trial. Lay v. State, 310 So. 2d 908, 1975 Miss. LEXIS 1919 (Miss. 1975).

In view of the fact that a previous conviction of possession of marijuana was not charged in an indictment, defendant could not be sentenced as a second offender following his conviction on charges of the sale of marijuana. Ladnier v. State, 273 So. 2d 169, 1973 Miss. LEXIS 1560 (Miss. 1973).

2. Sentence.

Defendant's sentence did not exceed the maximum permitted by law because defendant's indictment for possession of less than one-tenth of one gram of cocaine as a felony was amended to reflect defendant's status as a habitual offender and subsequent drug offender for sentencing purposes in the event defendant was convicted. Therefore, because defendant was convicted as a habitual and subsequent offender, the court sentenced defendant to the statutorily required sentence of imprisonment. Parker v. State, 208 So. 3d 19, 2017 Miss. App. LEXIS 12 (Miss. Ct. App. 2017).

Review of defendant's Miss. Code Ann. § 41-29-147 subsequent drug offender sentence was procedurally barred because (1) defendant did not object at sentencing, and (2) defendant's sentence was less than the statutory maximum, so the sentence was not illegal. Carver v. State, 227 So. 3d 1149, 2016 Miss. App. LEXIS 698 (Miss. Ct. App. 2016), rev'd, 227 So. 3d 1090, 2017 Miss. LEXIS 415 (Miss. 2017).

Because defendant, who was convicted of possession of more than thirty grams but less than one kilogram of marijuana, with intent to distribute, was a subsequent drug offender, Miss. Code Ann. § 41-29-147 permitted the trial judge to sentence defendant to a term up to twice that otherwise authorized. Gardner v. State, 178 So. 3d 714, 2015 Miss. LEXIS 469 (Miss. 2015).

Defendant was properly sentenced as a habitual offender and subsequent drug offender because he was informed of the State's intention to double his sentence five days before trial; defendant did not explaine why the State's motion to amend his indictment five days before trial unfairly surprised him, other than saying that the State waited eighteen months to do so. Wells v. State, 160 So. 3d 1136, 2015 Miss. LEXIS 85 (Miss.), overruled in part, Rowsey v. State, 188 So. 3d 486, 2015 Miss. LEXIS 573 (Miss. 2015).

Trial court incorrectly believed that it had no discretion in sentencing defendant as a subsequent drug offender; trial judges have complete discretion whether and how much to enhance a defendant's sentence as a subsequent drug offender under the statute. Wells v. State, 160 So. 3d 1136, 2015 Miss. LEXIS 85 (Miss.), overruled in part, Rowsey v. State, 188 So. 3d 486, 2015 Miss. LEXIS 573 (Miss. 2015).

Defendant's contention that, for a conviction of possession of methamphetamine, defendant was illegally sentenced because, contrary to defendant's admissions under oath at the guilty plea hearing, defendant had not been previously convicted of a drug offense was without merit in that various documents, including the sentencing order, did not support defendant's claims. Ferrell v. State, 158 So. 3d 1204, 2015 Miss. App. LEXIS 65 (Miss. Ct. App. 2015).

Trial court did not err in denying defendant's motion for post-conviction relief because defendant was sentenced for selling a controlled substance in accordance with the proper statutory provisions; defendant pleaded guilty to violating Miss. Code Ann. § 41-29-139 and was sentenced for the "sale," not "possession," of the controlled substance, and the trial court sentenced defendant as a subsequent drug offender under Miss. Code Ann. § 41-29-147, and not as a habitual offender, in conformity with his plea negotiations. Whatley v. State, 123 So. 3d 461, 2013 Miss. App. LEXIS 28 (Miss. Ct. App.), cert. denied, 123 So. 3d 450, 2013 Miss. LEXIS 530 (Miss. 2013).

Defendant's 126-year sentence for selling cocaine, methamphetamine, and marijuana was not disproportionate to the crimes because the sentence was statutorily authorized, as (1) Miss. Code Ann. § 41-29-139(b)(1) and (3) permitted maximum sentences of 30 years and 3 years, (2) Miss. Code Ann. § 99-19-81 required a maximum sentence, as defendant was convicted of a third felony, (3) the doubling of each maximum sentence was authorized by Miss. Code Ann. § 41-29-147, based on defendant's prior drug conviction, and (4) Miss. Code Ann. § 99-19-21 authorized the court to order that the sentences run consecutively. Mosley v. State, 104 So. 3d 839, 2012 Miss. LEXIS 465 (Miss. 2012).

After pleading guilty to two counts of selling less than 30 grams of marijuana, Miss. Code Ann. § 41-29-139(b)(3), and receiving a nine-year sentence, an inmate's post-conviction relief motion, claiming the sentence constituted cruel and unusual punishment, was properly dismissed because although the maximum sentence for each count was three years, the inmate was subject to enhanced punishment as a subsequent offender, pursuant to Miss. Code Ann. § 41-29-147, and as a habitual offender, pursuant to Miss. Code Ann. § 99-19-81; the sentence did not exceed the statutory maximum. Wooten v. State, 73 So. 3d 547, 2011 Miss. App. LEXIS 334 (Miss. Ct. App. 2011).

Trial court did not err in denying appellant's petition for post-conviction relief because appellant sentence and fine for the sale of marijuana under Miss. Code Ann. § 41-29-139 did not violate the statutory maximum and was not illegal; the trial court had no discretion due to the effect of Miss. Code Ann. § 99-19-81, and accordingly, appellant received the maximum sentence and fine for the offense without eligibility for parole or probation under § 99-19-81, and the sentence was doubled under the Uniform Controlled Substances Act, Miss. Code Ann. § 41-29-147. Miller v. State, 61 So. 3d 944, 2011 Miss. App. LEXIS 75 (Miss. Ct. App. 2011).

In a case in which defendant's conviction for possession of approximately 2.37 grams of cocaine was his second drug offense, pursuant to Miss. Code Ann. § 41-29-147, he was subject to twice the maximum sentence of 30 years set forth in Miss. Code Ann. § 41-29-139(b)(1), and as a habitual offender, he was also subject to an additional enhanced penalty under Miss. Code Ann. § 99-19-83, which called for a mandatory life sentence, his life sentence was not disproportionate to the crime and did not constitute cruel and unusual punishment. Clay v. State, 20 So. 3d 743, 2009 Miss. App. LEXIS 696 (Miss. Ct. App. 2009).

In a post-conviction proceeding in which defendant's habitual offender status was changed to reflect the sentence enhancement under Miss. Code Ann. § 41-29-147 for being a second or subsequent offender, defendant argued unsuccessfully that his counsel was ineffective for advising him to plead guilty to an enhanced sentence based on a prior misdemeanor conviction, rather than a felony conviction. Since § 41-29-147 permitted the doubling of his sentence for a prior misdemeanor drug conviction, his counsel was not ineffective for failing to object to the sentence enhancement. Burris v. State, 18 So. 3d 321, 2009 Miss. App. LEXIS 633 (Miss. Ct. App. 2009).

In a post-conviction proceeding in which defendant's habitual offender status was changed to reflect the sentence enhancement under Miss. Code Ann. § 41-29-147 for being a second or subsequent offender, defendant argued unsuccessfully that his 16-year sentence with 12 years to serve and four years suspended on post-release supervision, and $3,000 in fines was erroneously enhanced based on a prior misdemeanor offense. The State showed that he had a prior misdemeanor drug conviction, the applicable sentencing range for defendant's second offense was between a minimum of four years and a maximum of sixteen years with a fine of up to $100,000, and § 41-29-147 allowed the doubling of his sentence for a prior misdemeanor drug conviction. Burris v. State, 18 So. 3d 321, 2009 Miss. App. LEXIS 633 (Miss. Ct. App. 2009).

Defendant's 60-year sentence after he was convicted for the possession of methamphetamine precursors was appropriate and not disproportionate under Miss. Code Ann. §§ 41-29-313(1)(c) or 41-29-147 because it was within the legislature's prerogative to determine that three drug offense could result in a sentence of 60 years. The sentence was harsh, but not grossly disproportionate. Houser v. State, 29 So. 3d 813, 2009 Miss. App. LEXIS 562 (Miss. Ct. App. 2009), cert. denied, 29 So. 3d 774, 2010 Miss. LEXIS 135 (Miss. 2010).

Where appellant was convicted of selling a Schedule II controlled substance in violation of Miss. Code Ann. § 41-29-139, he had two previous felony convictions for grand larceny and the sale of a Schedule IV controlled substance. The circuit court determined he was eligible for enhanced sentencing as a habitual offender under Miss. Code Ann. §§ 99-19-81, 41-29-147 and sentenced him to thirty years in custody without parole. Lacey v. State, 29 So. 3d 786, 2009 Miss. App. LEXIS 305 (Miss. Ct. App. 2009), cert. denied, 2010 Miss. LEXIS 136 (Miss. Mar. 11, 2010).

Defendant was properly sentenced as a second and subsequent offender under the statute after defendant was convicted of selling cocaine because defendant's prior conviction for conspiracy to sell a controlled substance qualified as a prior conviction under the statute. Linson v. State, 9 So. 3d 1210, 2009 Miss. App. LEXIS 278 (Miss. Ct. App. 2009).

Prohibition against the admissibility of evidence of a previous conviction based on a nolo contendere plea in another case did not apply to sentencing enhancements and a prior misdemeanor could properly be used to indict defendant as a second and subsequent offender. Jackson v. State, 1 So. 3d 921, 2008 Miss. App. LEXIS 590 (Miss. Ct. App. 2008).

Defendant's sentence as a habitual offender after he was convicted of the possession of cocaine and the possession of hydromorphone was constitutional because he was sentenced to 108 years under Miss. Code Ann. § 41-29-147, and that sentence was within the statutory limits. Roach v. State, 7 So. 3d 932, 2007 Miss. App. LEXIS 538 (Miss. Ct. App. 2007), rev'd, 7 So. 3d 911, 2009 Miss. LEXIS 199 (Miss. 2009).

Post-conviction relief was denied without an evidentiary hearing where defendant pled guilty to a drug charge because the trial court informed him of the consequences of the plea, despite an attorney's prediction that he would receive less time; moreover, a 34-year sentence was not disproportionate since it was within the limits of Miss. Code Ann. § 41-29-313 and Miss. Code Ann. § 41-29-147. Bridges v. State, 973 So. 2d 246, 2007 Miss. App. LEXIS 240 (Miss. Ct. App. 2007).

Defendant was indicted and sentenced as a subsequent offender under Miss. Code Ann. § 41-29-147 and as a habitual offender under Miss. Code Ann. § 99-19-81 for the crime of sale of a controlled substance; drug sentences were distinguished from sentences for crimes that required a judge to impose a sentence reasonably expected to be less than life in the absence of a jury recommending a life sentence. Hudderson v. State, 941 So. 2d 221, 2006 Miss. App. LEXIS 803 (Miss. Ct. App. 2006).

Three different statutory enhancements were properly used in sentencing defendant to 32 years' imprisonment for cocaine possession while possessing a firearm and firearm possession by a convicted felon; because he had been twice previously convicted of felonies, and sentenced to separate terms of at least one year, the maximum base term of imprisonment for possession, eight years under Miss. Code Ann. § 41-29-139(c)(1)(B), Miss. Code Ann. § 99-19-81, applied; because he also possessed a firearm, that sentence was doubled to 16 years, and because he had been previously convicted of a drug offense, the trial judge doubled the sentence again to arrive at a 32-year sentence. Mosley v. State, 930 So. 2d 459, 2006 Miss. App. LEXIS 401 (Miss. Ct. App. 2006).

Although defendant's sixty-year sentence for possession of marijuana was harsh, in light of his prior felony controlled substance violations and the fact that he was an habitual offender for possession and delivery of marijuana, the sentence was proper. Tate v. State, 946 So. 2d 376, 2006 Miss. App. LEXIS 246 (Miss. Ct. App. 2006), cert. denied, 947 So. 2d 960, 2007 Miss. LEXIS 66 (Miss. 2007).

Defendant's 35-year enhanced sentence for selling cocaine was not excessive as the sentence imposed fell within the statutory range of available sentences: defendant was sentenced to serve 35 years, and the Miss. Code Ann. §§ 41-29-139 (b)(1), -147 provided for a maximum sentence of up to 60 years. McDougle v. State, 918 So. 2d 768, 2005 Miss. App. LEXIS 329 (Miss. Ct. App. 2005).

In defendant's case, the trial judge not only imposed the maximum sentence as required by statute, but also doubled the sentence and fines under Miss. Code Ann. § 41-29-147; however, it was obvious that the judge did not consider defendant's age when he imposed the sentence and that he did not take defendant's life expectancy into consideration when he doubled the sentence as per § 41-29-147. The sentence of 30 years for the possession of two grams but less than 10 grams of methamphetamine conviction was proper, but the discretionary imposition of consecutive terms of 60 years for the other conviction of two counts of possession of methamphetamine with intent to distribute, without appropriate on-the-record findings, was excessive; thus, resentencing taking into account defendant's life expectancy was required. Cannon v. State, 918 So. 2d 734, 2005 Miss. App. LEXIS 166 (Miss. Ct. App. 2005), cert. denied, 2005 Miss. LEXIS 537 (Miss. Aug. 25, 2005), aff'd in part and rev'd in part, 919 So. 2d 913, 2005 Miss. LEXIS 764 (Miss. 2005).

Defendant's effective sentence of 60 years without parole for a drug offense where none of his prior convictions involved crimes of violence was within the statutory guidelines prescribed by the legislature under Miss. Code Ann. §§ 41-29-147 and 99-19-81; additionally, although harsh, defendant's sentence was not grossly disproportionate to his crime. It was within the legislature's prerogative to determine that three crimes such as those committed by defendant could result in a sentence of 60 years without parole or chance of early release; thus, defendant's sentence did not violate the federal or state constitutional prohibitions of cruel and unusual punishment. Tate v. State, 912 So. 2d 919, 2005 Miss. LEXIS 194 (Miss. 2005).

Reference to both Miss. Code Ann. §§ 99-19-81 and 41-29-147 in the indictment was sufficient to give defendant notice that he could be sentenced under either and gave him a fair opportunity to present a defense. It is not for the defendant to choose between two available sentencing options, both of which have been included in the charges against him. Henderson v. State, 878 So. 2d 246, 2004 Miss. App. LEXIS 657 (Miss. Ct. App. 2004).

Defendant's 30-year sentence for a drug transaction was not unduly disproportionate in light of defendant's two prior convictions, and the fact that defendant qualified as a habitual offender. Alexander v. State, 875 So. 2d 261, 2004 Miss. App. LEXIS 558 (Miss. Ct. App. 2004).

Defendant's conviction for the sale of cocaine and his enhanced 40-year sentence were both proper under Miss. Code Ann. §§ 41-29-147 and 99-19-81 where the trial court's opening remarks on voir dire did not constitute reversible error and defendant did not object at trial; further, defendant failed to establish ineffective assistance of counsel; counsel negotiated a plea that defendant refused and succeeded in having the trial court dismiss the portion of the indictment dealing with the sale occurring within 1,500 feet of a public park. Easter v. State, 878 So. 2d 10, 2004 Miss. LEXIS 484 (Miss. 2004).

Denial of post-conviction relief was affirmed because the imposition of a 15-year sentence for the offense of transfer of cocaine was well within the 60-year maximum sentence. The offense of transfer of cocaine carried a maximum penalty of 30-years in prison, the enhanced penalty statute allowed the sentence to be doubled where a defendant's conviction was a second or subsequent drug offense, and because it was the inmate's fourth drug conviction, his sentence could be doubled. Falconer v. State, 873 So. 2d 163, 2004 Miss. App. LEXIS 417 (Miss. Ct. App. 2004).

Defendant's 15-year prison sentence for a possession of cocaine conviction was upheld because there was no merit to defendant's contention that the sentence was disproportionate. Because defendant was a second-time drug offender, sentence was subject to being doubled. Moore v. State, 873 So. 2d 129, 2004 Miss. App. LEXIS 161 (Miss. Ct. App. 2004).

Trial court's decision not to give defendant a "volume discount" but to impose 30- and 20-year consecutive sentences in two separate drug sale cases was proper, as the sentences were within the legal limits and were not grossly disproportionate. Heatherly v. State, 864 So. 2d 1036, 2004 Miss. App. LEXIS 73 (Miss. Ct. App. 2004).

Sentence imposed for the sale of marijuana was not excessive or disproportionate because the sentence was within the limits set forth by Miss. Code Ann. § 41-29-147; Miss Code Ann. § 41-29-139 did not apply because defendant was a second or subsequent offender. Fields v. State, 840 So. 2d 796, 2003 Miss. App. LEXIS 206 (Miss. Ct. App. 2003).

3. Sufficient evidence.

Substantial evidence supported defendant's conviction for possession of more than 30 grams but less than 250 grams of marijuana, as a second or subsequent offense, because defendant constructively possessed the marijuana by (1) being aware of the marijuana's presence and character, (2) having dominion and control over the marijuana, and (3) intending to possess the marijuana. Carver v. State, 227 So. 3d 1149, 2016 Miss. App. LEXIS 698 (Miss. Ct. App. 2016), rev'd, 227 So. 3d 1090, 2017 Miss. LEXIS 415 (Miss. 2017).

RESEARCH REFERENCES

ALR.

What Constitutes "Aggravated Felony" for Which Alien Can Be Deported or Removed Under 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C. § 1227(a)(2)(A)(iii)) – Marijuana Offenses Under 8 U.S.C. § 1101(a)(43)(B). 76 A.L.R. Fed. 2d 1.

What Constitutes "Aggravated Felony" for Which Alien Can Be Deported or Removed Under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C. § 1227(a)(2)(A)(iii)) – Cocaine and Crack Cocaine Offenses Under 8 U.S.C. § 1101(a)(43)(B). 76 A.L.R. Fed. 2d 61.

What Constitutes "Aggravated Felony" for Which Aliens Can Be Deported or Removed Under § 237(a)(2)(A)(iii) of the Immigration and Nationality Act (8 U.S.C. § 1227(a)(2)(A)(iii)) – Illicit Methamphetamine Offenses Under 8 U.S.C. § 1101(a)(43)(B). 78 A.L.R. Fed. 2d 151.

What Constitutes "Aggravated Felony" for Which Alien Can Be Deported or Removed Under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C. § 1227(a)(2)(A)(iii)) – Miscellaneous or Unspecified Narcotics Offenses Under 8 U.S.C. § 1101(a)(43)(B). 79 A.L.R. Fed. 2d 335.

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 207 et seq.

Law Reviews.

1982 Mississippi Supreme Court Review: Criminal Law and Procedure: Amendments to the Uniform Criminal Rules of Circuit Court Practice. 53 Miss. L. J. 162, March 1983.

Practice References.

Defense of Narcotics Cases (Matthew Bender).

§ 41-29-148. Burden of proof of exemptions and exceptions; presumption as to holding of registration or order form.

(1) It is not necessary for the state to negate any exemption in this article in any complaint, indictment or other pleading or in any trial, hearing, or other proceeding under said article. The burden of proof of any exemption or exception is upon the person claiming it.

(2) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this article, he is presumed not to be the holder of the registration or form. The burden of proof is upon him to rebut the presumption.

HISTORY:

Codes, 1942, § 6831-90; Laws, 1972, ch. 520, § 16, eff from and after passage (approved May 19, 1972).

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Burden of proof met.

1. In general.

The state was not required to prove the absence of a prescription in a prosecution for possession of a controlled substance, as the defendant had the burden of establishing any exemption or exception. Smith v. State, 527 So. 2d 660, 1988 Miss. LEXIS 295 (Miss. 1988).

Where defendant's conviction for possession with intent to deliver controlled substances was reversed for insufficient evidence, the case was remanded for resentencing of a lesser included offense, where defendant failed to establish he was entitled to exemption from prosecution for possession of controlled substances pursuant to a valid prescription under § 41-29-148. Bryant

v. State, 427 So. 2d 131, 1983 Miss. LEXIS 2449 (Miss. 1983).

2. Burden of proof met.

Defendant's conviction for the possession of at least 2, but less than 10, dosage units of hydrocodone in violation of Miss. Code Ann. § 41-29-139(c) was appropriate under Miss. Code Ann. § 41-29-148(1) because the State met its burden of proving that defendant possessed a controlled substance. Although defendant had a prescription for hydrocodone, he did not have a prescription for the 10 milligrams that were found in his possession; further, an officer testified that he recovered pills from defendant's truck and that those pills were later determined to have been hydrocodone. Sistrunk v. State, 48 So. 3d 557, 2010 Miss. App. LEXIS 159 (Miss. Ct. App.), cert. denied, 49 So. 3d 1139, 2010 Miss. LEXIS 629 (Miss. 2010).

Defendant's conviction for the possession of at least 2, but less than 10, dosage units of hydrocodone in violation of Miss. Code Ann. § 41-29-139(c) was appropriate under Miss. Code Ann. § 41-29-148(1) because the State met its burden of proving that defendant possessed a controlled substance. Although defendant had a prescription for hydrocodone, he did not have a prescription for the 10 milligrams that were found in his possession; further, an officer testified that he recovered pills from defendant's truck and that those pills were later determined to have been hydrocodone. Sistrunk v. State, 48 So. 3d 557, 2010 Miss. App. LEXIS 159 (Miss. Ct. App.), cert. denied, 49 So. 3d 1139, 2010 Miss. LEXIS 629 (Miss. 2010).

RESEARCH REFERENCES

ALR.

Burden of proof as to entrapment defense – state cases. 52 A.L.R.4th 775.

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 204, 205, 229.

8 Am. Jur. Trials 573, Defense of Narcotics Cases § 35.

CJS.

72 C.J.S., Poisons § 7.

Practice References.

Defense of Narcotics Cases (Matthew Bender).

Smith, Prosecution and Defense of Forfeiture Cases (Matthew Bender).

§ 41-29-149. Suspended sentences; eligibility for parole; resentencing.

(a) Regardless of the penalties provided heretofore for the violation of any section or portion of this article, the judge of the court of jurisdiction of any defendant may, in his discretion, suspend such penalty, penalties, or portions thereof, for any person charged with a first offense.

(b) A person convicted under this article or under any prior law superseded by this article for a violation of the law regarding controlled substances shall be eligible for parole just as in any other criminal conviction as provided by Section 47-7-3.

(c) Any person who was convicted and/or who is still serving a sentence in the Mississippi State Penitentiary for a first offense under any prior law superseded by this article, may petition the court of original jurisdiction for resentencing under the provisions of this article.

(d) Any person previously indicted under a prior law for violation of any law regarding controlled substances but not yet sentenced shall be sentenced under the provisions of this article provided that the sentence imposed is not greater than that provided under said prior law.

(e) For the purposes of the sentencing provisions of this article, a first offense shall be deemed to be and include any offense, offenses, act or acts prohibited by said law, or any prior law superseded by said law, committed prior to a first indictment under said law or under prior law superseded by said law.

HISTORY:
Codes, 1942, § 6831-74; Laws, 1971, ch. 521, § 24; Laws, 1972, ch. 520, § 9; Laws, 1977, ch. 482, § 2; Laws, 1981, ch. 502, § 7, eff from and after July 1, 1981.

Cross References —
Application of definition of first offender to penalty for marijuana offenses, see § 41-29-139(b)(1).

Penalty of life imprisonment without parole for sale of specified quantities of certain drugs, see § 41-29-139.

For another provision as to the effect of the Uniform Controlled Substances Law on prosecutions for violations of prior law, see § 41-29-173(a).

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. First time offender.

1. In general.
Because Miss. Code Ann. § 41-29-149 did not require the trial judgment to take into account defendant's first offender status and defendant was likely not a first time drug trafficker, the judge's choice to sentence defendant to the maximum sentence of 30 years was not grossly disproportional or inaccurate. Maldonado v. State, 796 So. 2d 247, 2001 Miss. App. LEXIS 298 (Miss. Ct. App. 2001).

Where a jury had convicted defendant of knowingly and intentionally selling a controlled substance, there was no indication that the trial judge abused his discretion in not applying § 41-29-149. Johnson v. State, 461 So. 2d 1288, 1984 Miss. LEXIS 2067 (Miss. 1984).

Decision in Worthy v. State (Miss) 308 So. 2d 921, that juvenile first offenders on drug charges who are sentenced to confinement are to be confined in either the Mississippi State Hospital at Whitfield or the East Mississippi State Hospital at Meridian does not preclude the trial judge, when sentencing juvenile first offender on a drug charge, from utilizing other legislative provisions which would promote his rehabilitation. Davis v. State, 323 So. 2d 741, 1975 Miss. LEXIS 1567 (Miss. 1975).

Where on remand for resentencing, the trial court sentenced defendant, this being his first offense, to 31/2 years in the state penitentiary, but included in the resentencing order a proviso that when defendant shall have served one year of the sentence, he should be placed on probation and parole as to the remaining 21/2 -year-period for a term of 5 years, inasmuch as the period of probation did not exceed the limit set in Code 1942 § 4004-25, the judgment would be affirmed. Pettus v. Alexander, 278 So. 2d 778, 1973 Miss. LEXIS 1453 (Miss. 1973).

Where defendant did not have more than one ounce of marijuana in his possession, he had served one year on the county farm under a sentence to serve one year on the county farm and 4 years' probation, and under the new law defendant could not have received a sentence of more than one year on the county farm and a fine of $1,000, the defendant was entitled to be resentenced and, since he had served the maximum jail sentence required by law, he was to be released and no additional fine could have been required of him. Royalty v. McAdory, 278 So. 2d 464, 1973 Miss. LEXIS 1450 (Miss. 1973).

Where the defendant was convicted of the sale of LSD prior to the effective date of the Controlled Substances Law but was not sentenced until after it took effect, and his sentence to a term of imprisonment exceeded that provided by the Law, the action would be remanded for resentencing in accordance with the provisions of the Law as provided in Code 1942, § 6831-74(g) [now subsection (c) of Code 1972, § 41-29-149]. Kyzar v. State, 271 So. 2d 390, 1972 Miss. LEXIS 1271 (Miss. 1972).

In view of the fact that the legislature had enacted a comprehensive narcotics law known as the Uniform Controlled Substances Law which materially reduced the penalty imposed on first offenders, and had also repealed Code 1942, § 6866, under which the defendant was sentenced to seven years following a conviction for the unlawful sale of LSD, while the conviction of the defendant, who was 22 years of age and a first offender, would be affirmed, the case would be remanded to the trial court for an imposition of a sentence in accordance with the provisions of the new law. Smith v. State, 248 So. 2d 436, 1971 Miss. LEXIS 1468 (Miss. 1971).

2. First time offender.
Appellate court overruled the petitioner's argument that his twenty-five year sentence for possession of marihuana with intent to sell was

disproportionate because the petitioner had other drug charges pending against him; thus, he did not fit the definition of a first offender, and the petitioner was indicted for possession of more than a kilogram but less than five kilos of marihuana, and he potentially could have received up to a thirty year sentence. White v. State, 921 So. 2d 402, 2006 Miss. App. LEXIS 113 (Miss. Ct. App. 2006).

Defendant's enhanced sentence of 60 years, a two million dollar fine, and fifty dollars in restitution, pursuant to Miss. Code Ann. § 41-29-152, for possession of methamphetamine with intent to distribute and possession of a firearm while intending to distribute, was not disproportionate to the crime committed and did not amount to cruel and unusual punishment in violation of the Eighth Amendment because his sentence did not exceed the statutory limits. Even though defendant was a first time offender and possessed a small amount of methamphetamine, the trial judge had discretion under Miss. Code Ann. § 41-29-149 to reduce the statutory sentence for first time offenders; however, the trial court was not required to take into account the first time offender status when sentencing. Passman v. State, 937 So. 2d 17, 2006 Miss. App. LEXIS 89 (Miss. Ct. App.), cert. denied, 936 So. 2d 367, 2006 Miss. LEXIS 482 (Miss. 2006), cert. denied, 549 U.S. 1324, 127 S. Ct. 1914, 167 L. Ed. 2d 570, 2007 U.S. LEXIS 3842 (U.S. 2007).

RESEARCH REFERENCES

ALR.

Propriety of imposing special parole term as part of sentence, under 21 USCS § 846, for a conspiracy to violate Comprehensive Drug Abuse Prevention and Control Act of 1970. 48 A.L.R. Fed. 767.

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 207 et seq.

Practice References.

Defense of Narcotics Cases (Matthew Bender).

§ 41-29-149.1. Mississippi Medical Emergency Good Samaritan Act.

(1) This section shall be known as the "Mississippi Medical Emergency Good Samaritan Act."

(2) As used in this section, the following words shall have the meanings ascribed:

(a) "Drug overdose" means an acute condition, including, but not limited to, extreme physical illness, decreased level of consciousness, respiratory depression, coma, mania, or death, resulting from the consumption or use of a controlled substance or dangerous drug in violation of this chapter or that a layperson would reasonably believe to be resulting from the consumption or use of a controlled substance or dangerous drug for which medical assistance is required.

(b) "Drug violation" means:

(i) A violation of Section 41-29-139 for possession of a controlled substance if the aggregate weight, including any mixture, is less than four (4) grams of a solid substance, less than twenty (20) dosage units, less than one (1) milliliter of liquid substance, or, if the substance is placed onto a secondary medium, has a combined weight of less than four (4) grams;

(ii) A violation of Section 41-29-139 for possession of thirty (30) grams or less of marijuana or ten (10) grams or less of synthetic cannabinoids; or

(iii) A violation of Section 41-29-139(d)(2) relating to possession and use of paraphernalia.

(c) "Medical assistance" means aid provided to a person experiencing or believed to be experiencing a drug overdose by a health care professional who is licensed, registered, or certified under the laws of this state and who, acting within the lawful scope of practice, may provide diagnosis, treatment, or emergency services relative to the overdose.

(d) "Seeks medical assistance" means accesses or assists in accessing the E-911 system or otherwise contacts or assists in contacting law enforcement or a poison control center or provides care to a person experiencing or believed to be experiencing a drug overdose while awaiting the arrival of medical assistance to aid the person.

(3)(a) Any person who in good faith seeks medical assistance for someone who is experiencing a drug overdose shall not be arrested, charged, or prosecuted for a drug violation if there is evidence that the person is under the influence of a controlled substance or in possession of a controlled substance as referenced in subsection (2) (b) of this section.

(b) Any person who is experiencing a drug overdose and, in good faith, seeks medical assistance or is the subject of a request for medical assistance shall not be arrested, charged, or prosecuted for a drug violation if there is evidence that the person is under the influence of a controlled substance or in possession of a controlled substance as referenced in subsection (2) (b) of this section.

(c) A person shall also not be subject to, if related to the seeking of medical assistance:

(i) Penalties for a violation of a permanent or temporary protective order or restraining order;

(ii) Sanctions for a violation of a condition of pretrial release, condition of probation, or condition of parole based on a drug violation; or

(iii) Forfeiture of property pursuant to Section 41-29-153 or 41-29-176 for a drug violation, except that prima facie contraband shall be subject to forfeiture.

(4) Nothing in this section shall be construed:

(a) To limit the admissibility of any evidence in connection with the investigation or prosecution of a crime with regard to a defendant who does not qualify for the protections of subsection (3) of this section or with regard to other crimes committed by a person who otherwise qualifies for protection pursuant to subsection (3) of this section;

(b) To limit any seizure of evidence or contraband otherwise permitted by law; and

(c) To limit or abridge the authority of a law enforcement officer to detain or take into custody a person in the course of an investigation or to effectuate an arrest for any offense except as provided in subsection (3) of this section.

HISTORY:

Laws, 2015, ch. 337, § 2; Laws, 2016, ch. 482, § 2, eff from and after July 1, 2016.

Editor's Notes —

Section 3 of Chapter 337, Laws of 2015, made this section effective July 1, 2015, and applicable to all acts committed on or after that date.

Section 1 of Senate Bill 2780, Laws of 2015, also enacted a new Section 41-29-149.1, effective July 1, 2015. As that section was identical to the new Section 41-29-149.1 enacted by Section 2 of Chapter 337, Laws of 2015, effective July 1, 2015, and signed by the Governor on March 13, 2015, the Governor vetoed Senate Bill 2780 on March 23, 2015.

Section 41-29-176, referred in this section, was repealed by Section 2 of Chapter 484, Laws of 2013, as amended by Section 5 of Chapter 501, Laws of 2014, and as amended by Section 23 of Chapter 452, Laws of 2015, effective July 1, 2018.

Cross References —

Immunity for certain persons who request emergency medical assistance for individuals appearing to need medical assistance due to alcohol consumption, see § 97-31-55.

§ 41-29-150. Participation in drug rehabilitation programs; probation; expunction of record upon application to court.

(a) Any person convicted under Section 41-29-139 may be required, in the discretion of the court, as a part of the sentence otherwise imposed, or in lieu of imprisonment in cases of probation or suspension of sentence, to attend a course of instruction conducted by the bureau, the State Board of Health, or any similar agency, on the effects, medically, psychologically and socially, of the misuse of controlled substances. The course may be conducted at any correctional institution, detention center or hospital, or at any center or treatment facility established for the purpose of education and rehabilitation of those persons committed because of abuse of controlled substances.

(b) Any person convicted under Section 41-29-139 who is found to be dependent upon or addicted to any controlled substance shall be required, as a part of the sentence otherwise imposed, or in lieu of imprisonment in cases of parole, probation or suspension of sentence, to receive medical treatment for such dependency or addiction. The regimen of medical treatment may include confinement in a medical facility of any correctional institution, detention center or hospital, or at any center or facility established for treatment of those persons committed because of a dependence or addiction to controlled substances.

(c) Those persons previously convicted of a felony under Section 41-29-139 and who are now confined at the Mississippi State Hospital at Whitfield, Mississippi, or at the East Mississippi State Hospital at Meridian, Mississippi, for the term of their sentence shall remain under the jurisdiction of the Mississippi Department of Corrections and shall be required to abide by all reasonable rules and regulations promulgated by the director and staff of said institutions and of the Department of Corrections. Any persons so confined who shall refuse to abide by said rules or who attempt an escape or who shall escape shall be transferred to the State Penitentiary or to a county jail, where appropriate, to serve the remainder of the term of imprisonment; this provision shall not preclude prosecution and conviction for escape from said institutions.

(d)(1) If any person who has not previously been convicted of violating Section 41-29-139, or the laws of the United States or of another state relating to narcotic drugs, stimulant or depressant substances, other controlled substances or marihuana is found to be guilty of a violation of subsection (c) or (d) of Section 41-29-139, after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place him on probation upon such reasonable conditions as it may require and for such period, not to exceed three (3) years, as the court may prescribe. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against such person and discharge him from probation before the expiration of the maximum period prescribed for such person's probation. If during the period of his probation such person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this subsection shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained by the bureau solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the penalties prescribed under this article for second or subsequent conviction, or for any other purpose. Discharge and dismissal under this subsection may occur only once with respect to any person; and

(2) Upon the dismissal of a person and discharge of proceedings against him under paragraph (1) of this subsection, the person may apply to the court for an order to expunge from all official records, other than the nonpublic records to be retained by the bureau under paragraph (1) of this subsection, all recordation relating to his arrest, indictment, trial, finding of guilt, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged, or that the person had satisfactorily served his sentence or period of probation and parole, it shall enter an order of expunction. The effect of the order shall be to restore the person, in the contemplation of the law, to the status he occupied before such arrest or indictment. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, indictment or trial in response to any inquiry made of him for any purpose. A person as to whom an order has been entered, upon request, shall be required to advise the court, in camera, of the previous conviction and expunction in any legal proceeding wherein the person has been called as a prospective juror. The court shall thereafter and before the selection of the jury advise the attorneys representing the parties of the previous conviction and expunction.

(e) Every person who has been or may hereafter be convicted of a felony offense under Section 41-29-139 and sentenced under Section 41-29-150(c) shall be under the jurisdiction of the Mississippi Department of Corrections.

(f) It shall be unlawful for any person confined under the provisions of subsection (b) or (c) of this section to escape or attempt to escape from said institution, and, upon conviction, said person shall be guilty of a felony and shall be imprisoned for a term not to exceed two (2) years.

(g) It is the intent and purpose of the Legislature to promote the rehabilitation of persons convicted of offenses under the Uniform Controlled Substances Law.

HISTORY:

Codes, 1942, § 6831-74(j-p); Laws, 1972, ch. 520, § 9; Laws, 1977, ch. 495, § 1; Laws, 1978, ch. 522, § 1; Laws, 1981, ch. 502, § 8; Laws, 2010, ch. 460, § 2, eff from and after July 1, 2010.

Editor's Notes —

Laws of 2010, ch. 460, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after July 1, 2010, and the provisions of this act shall be considered additional and supplemental to any other relief."

Cross References —

Use of persons convicted of an offense for work on highways or roads, see § 65-1-8.

Authority for use of persons convicted of drug offenses for work on state highway projects, see § 65-1-8.

Provision whereby person who has been convicted of a misdemeanor before reaching his twenty-third birthday, and who is first offender, may petition the court to have his record expunged, see § 99-19-71.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Relation to other statutes.

1. In general.

Circuit court did not err when it denied petitioner's motion to expunge his three convictions for selling marijuana because the circuit court accepted his guilty pleas, sentenced petitioner for each of the three charges, and did not withhold adjudicating him guilty of each charge. Clay v. State, 232 So. 3d 196, 2017 Miss. App. LEXIS 287 (Miss. Ct. App.), cert. denied, — So. 3d —, 2017 Miss. LEXIS 503 (Miss. 2017), cert. denied, 229 So. 3d 714, 2017 Miss. LEXIS 513 (Miss. 2017).

Miss. Code Ann. § 41-29-150(d)(2) did not apply because defendant's charges were never dismissed. defendant violated his probation by failing to report to his probation officer, failing to pay his supervision fees, and failing to avoid injurious and vicious habits, and the trial court adjudicated his guilt and sentenced him to a period of incarceration. Cassidy v. State, 110 So. 3d 335, 2013 Miss. App. LEXIS 123 (Miss. Ct. App. 2013).

Miss. Code Ann. § 41-29-150(d)(2) does not enumerate possession of pseudoephedrine and ephedrine as one of the offenses that allows for the possibility of expungement; the statute's mention of stimulants is insufficient. Fields v. State, 17 So. 3d 1159, 2009 Miss. App. LEXIS 627 (Miss. Ct. App. 2009).

Records of criminal offenses are kept pursuant to § 45-27-1. The legislature of Mississippi has specifically authorized expungment of criminal offender records in limited cases-youth court cases, §§ 43-21-159 and 43-21-265; first offense misdemeanor convictions occurring prior to age 23, § 99-19-71; drug possession convictions occurring prior to age 26, § 41-29-150; purchase of alcoholic beverages by one under age 21, § 67-3-70; and municipal court convictions, § 21-23-7. Expungment of felony convictions which arose pursuant to guilty pleas are governed by § 99-15-57 which provides that any person who pled guilty within 6 months prior to the effective date of § 99-15-26 may apply to the court for an order expunging his or her criminal records. Under §§ 99-15-57 and 99-15-26 a circuit court has the power to expunge a felony conviction pursuant to a guilty plea under certain conditions. Accordingly, a petitioner who pled guilty to the felony of burglary might have been eligible for relief pursuant to §§ 99-15-57 and 99-15-26 if his guilty plea had occurred on or after October 1, 1982, that being the earliest date to satisfy the "within 6 months prior to" March 31, 1983, requirement of § 99-15-57. However, the petitioner pleaded guilty to burglary on October 9, 1979, 3 years prior to October 1, 1982, and admitted that he did not fall within the criterion in any of the statutes authorizing expungment, and thus the trial court did not err in denying his petition for expungment. Caldwell v. State, 564 So. 2d 1371, 1990 Miss. LEXIS 262 (Miss. 1990).

Where a jury had convicted the defendant of knowingly and intentionally selling a controlled substance, there was no indication that the trial judge abused his discretion in not applying § 41-29-150. Johnson v. State, 461 So. 2d 1288, 1984 Miss. LEXIS 2067 (Miss. 1984).

Decision in Worthy v. State (Miss) 308 So. 2d 921, that juvenile first offenders on drug charges who are sentenced to confinement are to be confined in either the Mississippi State Hospital at Whitfield or the East Mississippi State Hospital at Meridian does not preclude the trial judge, when sentencing a juvenile first offender on a drug charge, from utilizing other legislative provisions which would promote his rehabilitation. Davis v. State, 323 So. 2d 741, 1975 Miss. LEXIS 1567 (Miss. 1975).

Subsection (d) of this statute must be construed as mandatory requirement that juvenile first offenders, convicted under Code 1972 § 41-29-139(a), (b), or (c), shall be sentenced to confinement in state hospitals. Worthy v. State, 308 So. 2d 921, 1975 Miss. LEXIS 1859 (Miss. 1975).

The trial court erred in sentencing a 20-year-old first offender, convicted under Code 1972 § 41-29-139(a), to a term of six years in the state penitentiary. Applegate v. State, 301 So. 2d 853, 1974 Miss. LEXIS 1668 (Miss. 1974).

2. Relation to other statutes.

Guilty plea to possession of precursors used in the manufacture of a controlled substance in violation of Miss. Code Ann. § 41-29-313(1)(b) could not be expunged under Miss. Code Ann. § 41-29-150(d)(2), because that statute did not enumerate possession of pseudoephedrine and ephedrine as one of the offenses that allowed for the possibility of expungement. Fields v. State, 17 So. 3d 1159, 2009 Miss. App. LEXIS 627 (Miss. Ct. App. 2009).

OPINIONS OF THE ATTORNEY GENERAL

An offender who has been convicted of a nonviolent offense and who has had a previous felony charge expunged under subdivision (d)(2) of this section may qualify as a first offender for parole eligibility purposes under § 47-7-3(g). 2003 Miss. Op. Att'y Gen. 589.

RESEARCH REFERENCES

ALR.

Validity of state statute imposing mandatory sentence or prohibiting granting of probation or suspension of sentence for narcotics offenses. 81 A.L.R.3d 1192.

Judicial Expunction of Criminal Record of Convicted Adult Under Statute – General Principles, and Expunction of Criminal Records Under Statutes Providing for Such Relief Where Criminal Proceeding Is Terminated in Favor of Defendant, upon Completion of Probation, upon Suspended Sentence, and Where Expungement Relief Predicated upon Type, and Number, of Offenses. 69 A.L.R.6th 1.

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances § 211.

§ 41-29-151. Penalties to be additional; barring of prosecutions.

Any penalty imposed for violation of this article is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

If a violation of this article is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

HISTORY:

Codes, 1942, § 6831-73; Laws, 1971, ch. 521, § 23, eff from and after passage (approved April 16, 1971).

RESEARCH REFERENCES

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances § 208.

41 Am. Jur. Trials 383, Habeas Corpus: Pretrial Rulings (double jeopardy).

§ 41-29-152. Enhancement of penalty for violations of Uniform Controlled Substances Law while in possession of firearm; "firearm" defined.

(1) Any person who violates Section 41-29-313 or who violates Section

41-29-139 with reference to a controlled substance listed in Schedule I, II, III, IV or V as set out in Sections 41-29-113 through 41-29-121, Mississippi Code of 1972, inclusive, and has in his possession any firearm, either at the time of the commission of the offense or at the time any arrest is made, may be punished by a fine up to twice that authorized by Section 41-29-139 or 41-29-313, or by a term of imprisonment or confinement up to twice that authorized by Section 41-29-139 or 41-29-313, or both.

(2) "Firearm" means any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive.

HISTORY:

Laws, 1994, ch. 527, § 1; Laws, 2000, ch. 452, § 1, eff from and after passage (approved Apr. 18, 2000.).

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Firearm possession.

1. In general.

Elements for the charge of sale of cocaine as listed in Miss. Code Ann. § 41-29-139 were necessarily included to prove the crime of sale of cocaine while in possession of a firearm under Miss. Code Ann. § 41-29-152, as § 41-29-152 simply provided for an enhanced penalty for the commission of a crime under § 41-29-139, but it was still necessary that each element of the charged offense under § 41-29-139 be proven; the jury was properly instructed that defendant could be found guilty of sale of cocaine, a lesser-included offense to the charge of sale of cocaine while in possession of a firearm, and thus pursuant to Miss. Code Ann. § 99-19-5(1), there was no merit to the argument that the indictment against was not valid because a lesser-included offense was not stated. Davis v. State, 950 So. 2d 1073, 2007 Miss. App. LEXIS 125 (Miss. Ct. App. 2007).

Defendant's enhanced sentence of 60 years, a two million dollar fine, and fifty dollars in restitution, pursuant to Miss. Code Ann. § 41-29-152, for possession of methamphetamine with intent to distribute and possession of a firearm while intending to distribute, was not disproportionate to the crime committed and did not amount to cruel and unusual punishment in violation of the Eighth Amendment because his sentence did not exceed the statutory limits. Even though defendant was a first time offender and possessed a small amount of methamphetamine, the trial judge had discretion under Miss. Code Ann. § 41-29-149 to reduce the statutory sentence for first time offenders; however, the trial court was not required to take into account the first time offender status when sentencing. Passman v. State, 937 So. 2d 17, 2006 Miss. App. LEXIS 89 (Miss. Ct. App.), cert. denied, 936 So. 2d 367, 2006 Miss. LEXIS 482 (Miss. 2006), cert. denied, 549 U.S. 1324, 127 S. Ct. 1914, 167 L. Ed. 2d 570, 2007 U.S. LEXIS 3842 (U.S. 2007).

An enhanced sentence under the statute may be imposed only where the trier of fact finds the presence of a weapon; thus, in a jury trial, an enhanced sentence may not be imposed by the judge without a determination by the jury that the defendant possessed a weapon. Hampton v. State, 760 So. 2d 803, 2000 Miss. App. LEXIS 121 (Miss. Ct. App. 2000).

2. Firearm possession.

Appellant's suit against the State for wrongful conviction and imprisonment for possession of a firearm by a convicted felon was properly dismissed; his claim that the firearm was inoperable was unavailing because he offered no evidence that it could not be readily converted to expel a projectile, and Miss. Code Ann. § 97-37-5(1) did not require the State to prove that it was operable at the time of his arrest. Hymes v. State, 121 So. 3d 938, 2013 Miss. App. LEXIS 272 (Miss. Ct. App. 2013), overruled in part, Edmonds v. State, 234 So. 3d 286, 2017 Miss. LEXIS 269 (Miss. 2017).

Because defendant's sentence of 60 years with 47 years to serve in the custody of Mississippi Department of Corrections fell within the statutory limits, as it was enhanced for his possession of a firearm while he possessed a Schedule II controlled substance, no further analysis under Solem was required and it was affirmed on appeal. Barlow v. State, 8 So. 3d 196, 2008 Miss. App. LEXIS 471 (Miss. Ct. App. 2008), cert. denied, 11 So. 3d 1250, 2009 Miss. LEXIS 204 (Miss. 2009).

Trial court did not err in denying defendant's motion for a new trial or for judgment notwithstanding the verdict because there was sufficient evidence to support his convictions for possession of methamphetamine with intent to distribute and possession of a firearm while intending to distribute under Miss. Code Ann. § 41-29-115 and Miss. Code Ann. § 41-29-152; defendant admitted to the undercover officer that he had drug paraphernalia in his home and the officers found a .380 loaded handgun, a police scanner, foil, and scales along with drugs during a search of defendant's home, which were relevant factors to be considered by the jury when deciding if defendant was involved in the distribution of drugs. Passman v. State, 937 So. 2d 17, 2006 Miss. App. LEXIS 89 (Miss. Ct. App.), cert. denied, 936 So. 2d 367, 2006 Miss. LEXIS 482 (Miss. 2006), cert. denied, 549 U.S. 1324, 127 S. Ct. 1914, 167 L. Ed. 2d 570, 2007 U.S. LEXIS 3842 (U.S. 2007).

Three different statutory enhancements were properly used in sentencing defendant to 32 years' imprisonment for cocaine possession while possessing a firearm and firearm possession by a convicted felon. Mosley v. State, 930 So. 2d 459, 2006 Miss. App. LEXIS 401 (Miss. Ct. App. 2006).

RESEARCH REFERENCES

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 207 et seq.

§ 41-29-153. Forfeitures.

(a) The following are subject to forfeiture:

(1) All controlled substances which have been manufactured, distributed, dispensed or acquired in violation of this article or in violation of Article 5 of this chapter;

(2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this article or in violation of Article 5 of this chapter;

(3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2) of this subsection;

(4) All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment of property described in paragraph (1) or (2) of this subsection, however:

A. No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this article;

B. No conveyance is subject to forfeiture under this section by reason of any act or omission proved by the owner thereof to have been committed or omitted without his knowledge or consent; if the confiscating authority has reason to believe that the conveyance is a leased or rented conveyance, then the confiscating authority shall notify the owner of the conveyance within five (5) days of the confiscation;

C. A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission;

D. A conveyance is not subject to forfeiture for a violation of Section 41-29-139(c)(2)(A)1, 2 or (B)1 or (C)1,2,3;

(5) All money, deadly weapons, books, records, and research products and materials, including formulas, microfilm, tapes and data which are used, or intended for use, in violation of this article or in violation of Article 5 of this chapter;

(6) All drug paraphernalia as defined in Section 41-29-105(v); and

(7) Everything of value, including real estate, furnished, or intended to be furnished, in exchange for a controlled substance in violation of this article, all proceeds traceable to such an exchange, and all monies, negotiable instruments, businesses or business investments, securities, and other things of value used, or intended to be used, to facilitate any violation of this article. All monies, coin and currency found in close proximity to forfeitable controlled substances, to forfeitable drug manufacturing or distributing paraphernalia, or to forfeitable records of the importation, manufacture or distribution of controlled substances are presumed to be forfeitable under this paragraph; the burden of proof is upon claimants of the property to rebut this presumption.

A. No property shall be forfeited under the provisions of subsection (a)(7) of this section, to the extent of the interest of an owner, by reason of any act or omission established by him to have been committed or omitted without his knowledge or consent.

B. Neither personal property encumbered by a bona fide security interest nor real estate encumbered by a bona fide mortgage, deed of trust, lien or encumbrance shall be forfeited under the provisions of subsection (a)(7) of this section, to the extent of the interest of the secured party or the interest of the mortgagee, holder of a deed of trust, lien or encumbrance by reason of any act or omission established by him to have been committed or omitted without his knowledge or consent.

(b) Property subject to forfeiture may be seized by the bureau, local law enforcement officers, enforcement officers of the Mississippi Department of Transportation, highway patrolmen, the board, or the State Board of Pharmacy upon process issued by any appropriate court having jurisdiction over the property. Seizure without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this article;

(3) The bureau, the board, local law enforcement officers, enforcement officers of the Mississippi Department of Transportation, or highway patrolmen, or the State Board of Pharmacy have probable cause to believe that the property is directly or indirectly dangerous to health or safety;

(4) The bureau, local law enforcement officers, enforcement officers of the Mississippi Department of Transportation, highway patrolmen, the board, or the State Board of Pharmacy have probable cause to believe that the property was used or is intended to be used in violation of this article; or

(5) The seizing law enforcement agency obtained a seizure warrant as described in paragraph (f) of this section.

(c) Controlled substances listed in Schedule I of Section 41-29-113 that are possessed, transferred, sold, or offered for sale in violation of this article are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in the said Schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

(d) Species of plants from which controlled substances in Schedules I and II of Sections 41-29-113 and 41-29-115 may be derived which have been planted or cultivated in violation of this article, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

(e) The failure, upon demand by the bureau and/or local law enforcement officers, or their authorized agents, or highway patrolmen designated by the bureau, the board, or the State Board of Pharmacy, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

(f)(1) When any property is seized under the Uniform Controlled Substances Law, except as otherwise provided in paragraph (3) of this subsection, by a law enforcement agency with the intent to be forfeited, the law enforcement agency that seized the property shall obtain a seizure warrant from the county or circuit court having jurisdiction of such property within seventy-two (72) hours of any seizure, excluding weekends and holidays. Any law enforcement agency that fails to obtain a seizure warrant within seventy-two (72) hours as required by this section shall notify the person from whom the property was seized that it will not be forfeited and shall provide written instructions advising the person how to retrieve the seized property.

(2) A circuit or county judge having jurisdiction of any property other than a controlled substance, raw material or paraphernalia, may issue a seizure warrant upon proper oath or affirmation from a law enforcement agency. The law enforcement agency that is seeking a seizure warrant shall provide the following information to the judge:

A. Probable cause to believe that the property was used or intended to be used in violation of this article;

B. The name of the person from whom the property was seized; and

C. A detailed description of the property which is seized, including the value of the property.

(3) This subsection does not apply to seizures performed pursuant to Section 41-29-157 when property is specifically set forth in a search and seizure warrant.

HISTORY:

Codes, 1942, § 6831-79; Laws, 1971, ch. 521, § 29; Laws, 1972, ch. 520, § 12; Laws, 1979, ch. 473, § 5; Laws, 1981, ch. 502, § 9; Laws, 1982, ch. 323, § 3; Laws, 1985, ch. 388, § 2. Reenacted without change, Laws, 1996, ch. 511, § 1;

Laws, 1999, ch. 417, § 1; Laws, 2005, ch. 463, § 1; Laws, 2007, ch. 327, § 1; Laws, 2017, ch. 329, § 3, eff from and after July 1, 2017.

Joint Legislative Committee Note —

In 2009, an error in a statutory reference in (a)(3) and (a)(4) was corrected at the direction of co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, by substituting "...paragraph (1) or (2) of this subsection..." for "paragraph (1) or (2) of this section..." The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference in the first sentence of (f)(1) by substituting "paragraph (3) of this subsection" for "subsection (3) of this section." The Joint Committee ratified the correction at the August 15, 2017, meeting of the Committee.

Amendment Notes —

The 2017 amendment substituted "Section 41-29-139(c)(2)(A)1, 2 or (B)1 or (C)1,2,3" for "Section 41-29-139(c)(2)(A), (B) or (C)" in (a)(4)D; added (b)(5); and added (f).

Cross References —

Accrual of forfeitures upon adoption of constitution, see Miss. Const. Art. 15, § 281.

Disposition of proceeds of sale of forfeited weapons generally, see § 45-9-151.

Other narcotic drug regulations, Article 5 of this chapter, see §§ 41-29-301 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Drug paraphernalia.
3. Innocent owner defense.
4. Proximity presumption.
5. Exclusions.

1. In general.

It was error to grant a driver's motion to dismiss for failure to state a claim because the city's forfeiture petition satisfied the notice pleading requirements; the petition for forfeiture put the driver on reasonable notice of the city's claims, and it sufficiently demonstrated that a recognized cause of action existed upon which the city could prevail under some set of facts. City of Meridian v. $104,960.00 United States Currency, 231 So. 3d 972, 2017 Miss. LEXIS 404 (Miss. 2017).

Record contained sufficient evidence to show that a driver's seized property facilitated a violation of the Mississippi Uniform Controlled Substances Law because the State presented evidence that the seized property constituted instrumentalities used in the furtherance of a drug-trafficking operation and that the vehicle played a role in the furtherance of drug trafficking; the forfeiture of the driver's property failed to result in a fine that was grossly disproportionate to his culpability. Bobo v. State ex rel. Pelahatchie Police Dep't (In re $137,325.00 in U.S. Currency), 204 So. 3d 317, 2016 Miss. App. LEXIS 746 (Miss. Ct. App. 2016).

Record contained substantial evidence to support the forfeiture of a driver's property because a rational trier of fact could have found that his vehicle and currency were the product of or the instrumentalities of violations of the Mississippi Uniform Controlled Substances Law; law-enforcement officials testified that the items observed and photographed in the vehicle at the time of the traffic stop were consistent with items found in vehicles used to smuggle contraband. Bobo v. State ex rel. Pelahatchie Police Dep't (In re $137,325.00 in U.S. Currency), 204 So. 3d 317, 2016 Miss. App. LEXIS 746 (Miss. Ct. App. 2016).

Circuit court properly forfeited defendant's primary residence, a parcel used by his associates, and a safe in defendant's home, after he pled guilty to possession with intent to distribute five grams or more of methamphetamine, because defendant and his associates used the properties to sell and to facilitate the sale of drugs, it would be difficult to separate the offending areas of the property from the remaining non-offending areas, and the money, including money that was given to a confidential informant for the purchase of methamphetamine was found in close proximity to forfeitable drug manufacturing or distributing paraphernalia. Warren L. Lewis Revocable Trust v. State ex rel.Lamar Cnty. Sheriff's Dep't, 199 So. 3d 1245, 2016 Miss. LEXIS 381 (Miss. 2016).

State did not prove that it was entitled to forfeiture of defendant's two bank accounts, the cash in his safety deposit box, seven parcels of real property, trucks, ATVs, or bulldozers because the State offered no evidence that the property was used, purchased, or associated with defendant's criminal conduct. Warren L. Lewis Revocable Trust v. State ex rel.Lamar Cnty. Sheriff's Dep't, 199 So. 3d 1245, 2016 Miss. LEXIS 381 (Miss. 2016).

In a case in which a city filed a petition for forfeiture pursuant to Miss. Code Ann. § 41-29-

153 after the police department found $104,690 in appellant's truck during a traffic stop, the city presented no facts or circumstances to show how the use or intended use of the money and truck violated the Uniform Controlled Substances Law. Because the city failed to meet Miss. R. Civ. P. 8's threshold requirements, the county court properly dismissed the petition under Miss. R. Civ. P. 12(b)(6). City of Meridian v. $104,960.00 United States Currency, 231 So. 3d 1055, 2016 Miss. App. LEXIS 450 (Miss. Ct. App. 2016), rev'd, 231 So. 3d 972, 2017 Miss. LEXIS 404 (Miss. 2017).

Rational trier of fact could have found by a preponderance of the evidence that the funds found in defendant's car were the product of or instrumentalities of violations of the Uniform Controlled Substances Law and were found in close proximity to drug distributing paraphernalia. Cowan v. Miss. Bureau of Narcotics, 2 So. 3d 759, 2009 Miss. App. LEXIS 61 (Miss. Ct. App. 2009).

Owner failed to file a statutorily sufficient petition to recover seized property and contest forfeiture within 30 days after receipt of the notice of intention to forfeit, because the petition was only signed by the owner's attorney, and the appellate court overruled the owner's assertion that the amended answer after the 30 days passed cured the deficiency. 1999 Buick Century v. State, 966 So. 2d 841, 2007 Miss. App. LEXIS 663 (Miss. Ct. App. 2007).

Forfeiture of a vehicle because it was purchased with drug funds was proper under Miss. Code Ann. § 41-29-153(a)(4), (7) because the alleged owner was but a straw man involving the ownership of a vehicle; the state proved by a preponderance of the evidence that the true owner went to the dealership to check out the truck, paid the initial cash for it, and paid for the maintenance on the vehicle. 2004 Chevrolet Pickup v. State, 970 So. 2d 186, 2007 Miss. App. LEXIS 537 (Miss. Ct. App. 2007).

The forfeiture of $177 found on the defendant's person was not grossly disproportionate to the offense charged where the defendant was found in possession of crack cocaine while also in possession of a firearm. Luckett v. State, 797 So. 2d 339, 2001 Miss. App. LEXIS 148 (Miss. Ct. App. 2001).

Vehicles used or intended for use in transportation of controlled substances, among other things, are subject to forfeiture. One Ford Mustang Convertible v. State ex rel. Clay County Sheriff's Dep't, 676 So. 2d 905, 1996 Miss. LEXIS 311 (Miss. 1996).

Property owner must file answer to petition for forfeiture; once this is done, burden is on petitioner to prove propriety of forfeiture by a preponderance of the evidence. One Ford Mustang Convertible v. State ex rel. Clay County Sheriff's Dep't, 676 So. 2d 905, 1996 Miss. LEXIS 311 (Miss. 1996).

The evidence was sufficient to support a forfeiture of the defendant's real property where numerous drug-related arrests for cocaine trafficking had been made at the property, members of the defendant's family had been arrested in her presence for possession of crack cocaine, police officers had seized drugs and related paraphernalia from her home in her presence, crack cocaine was found in plain view in her home, drug paraphernalia was dispersed throughout the house, and $8,000 in loose cash was found in the defendant's purse. 335 W. Ash St. v. City of Jackson, 664 So. 2d 194, 1995 Miss. LEXIS 499 (Miss. 1995).

Property owners must do "all that is reasonably expected to prevent the proscribed use of the property, with an emphasis more on the term 'reasonable' than on the term 'all' "; while a property owner "need not take heroic or vigilante measures to rid his property of narcotics activity," "reasonable affirmative conduct" to prevent the property from being used to facilitate illegal drug transactions is required. 335 W. Ash St. v. City of Jackson, 664 So. 2d 194, 1995 Miss. LEXIS 499 (Miss. 1995).

A trial court erred in granting forfeiture of $107,000 found in a gift-wrapped box in the trunk of an automobile during a routine traffic stop, because the evidence was insufficient to connect the money to any criminal activity where no drugs or drug paraphernalia were found, and there was no evidence, other than the large sum of money, indicating that the defendant fit a drug courier profile. One Hundred Seven Thousand Dollars ($107,000.00) United States Currency v. State ex rel. Harrison County Sheriff's Dep't, 643 So. 2d 917, 1994 Miss. LEXIS 464 (Miss. 1994).

Where a property owner files a verified answer denying that the property is subject to forfeiture, the burden is on the State to prove to the contrary; the State must demonstrate by a preponderance of the evidence that the owner had knowledge of or consented to the illegal use of his or her property for drug-related activities. Marsh v. Gruver, 642 So. 2d 381, 1994 Miss. LEXIS 422 (Miss. 1994).

The evidence was insufficient to demonstrate a vehicle owner's knowledge of or consent to her brother's use of her vehicle to transport a controlled substance, and therefore forfeiture of the vehicle after the brother's arrest for possession of cocaine was improper, even though the owner was aware that her brother had previously been arrested on drug possession charges and she frequently allowed him to use her vehicle, where she filed a verified answer denying that her vehicle was subject to forfeiture, and she had warned her brother against using her car for drug activities, since facts merely creating a suspicion that the owner of a vehicle had knowledge of the driver's illegal activity are inadequate to support a forfeiture. Marsh v. Gruver, 642 So. 2d 381, 1994 Miss. LEXIS 422 (Miss. 1994).

A trial judge did not err in finding that only $35.00 of marked "buy money" given to the defendants by law enforcement officers in purchasing marijuana was forfeitable, even though the $35.00 was in a jar containing a total of $479.72 and the jar was in a house trailer in which marijuana was also found, where the record was silent as to the exact location of the jar and its proximity to the marijuana, and therefore it could not be said that the trial court erred in failing to find that the cash was in such close proximity to the marijuana as to invoke the statutory presumption of forfeitability; "close proximity" is not defined in terms of a measured distance, and controlled substances anywhere in a residence are not considered as a matter of law to be in "close proximity" to any currency also found in that residence. City of Meridian v. Hodge, 632 So. 2d 1309, 1994 Miss. LEXIS 112 (Miss. 1994).

There was insufficient proof of the necessary nexus between $1,270 in cash found in a suspect's pocket and crack cocaine found in his car to warrant seizure of the money where the cocaine was in a match box on the passenger side of the console, there was no evidence of furtive gestures or any other suggestion that the suspect had handled the package, the suspect denied that the money was in close proximity to the cocaine, he offered a reason why he was carrying the money on his person, and there was no evidence that the suspect was a drug dealer; in the absence of direct proof of trafficking, where there is uncontradicted proof of an alternate source, the presumption in § 41-29-153(a)(7) that drugs and money found in close proximity are forfeitable has been rebutted and disappears. Neely v. State ex rel. Tate County, 628 So. 2d 1376, 1993 Miss. LEXIS 562 (Miss. 1993).

Objects carried on the person are mobile and, in the context of § 41-29-153(a)(7), should not ordinarily be viewed as in "close proximity" to anything not also on the person, unless the circumstances are such that the fact finder can reasonably infer that the object not found on the person had been on the person immediately prior to discovery, at a time when the object of forfeiture was also on the person. Neely v. State ex rel. Tate County, 628 So. 2d 1376, 1993 Miss. LEXIS 562 (Miss. 1993).

A trial judge abused his discretion when he entered an agreed order and final judgment ex parte, which disposed of a complaint for forfeiture under § 41-29-153, absent the consent and approval of the defendant or his attorney. Lee v. State, 607 So. 2d 128, 1992 Miss. LEXIS 660 (Miss. 1992).

In conviction for possession of marijuana with intent to distribute, mailing drug proceeds, and being felon in possession of 3 firearms, seizure of the defendant's automobile under subsection (a)(4), without a warrant, by government officials who intended to seek forfeiture of automobile, was proper on basis of subsections (b)(1) and (4), as state narcotics agents had seen defendant using car to facilitate transportation of what they believed to be drug proceeds to Columbus, Mississippi post office, and the agents were executing search warrant at time car was seized. United States v. Hamilton, 931 F.2d 1046, 1991 U.S. App. LEXIS 9437 (5th Cir. Miss. 1991).

$149,700 in currency found in the defendant's vehicle was forfeitable under § 41-29-153(a)(7) where marijuana and marijuana residue were found throughout the vehicle, the defendant admitted that the marijuana belonged to him, the defendant clearly violated the Mississippi Uniform Controlled Substance Law, the defendant told the trial court that he grew marijuana in Texas, the defendant was stopped on his way back from a known drug-trafficking city, and the defendant failed to explain why the money was in close proximity to a controlled substance. Jones v. State, 607 So. 2d 23, 1991 Miss. LEXIS 985 (Miss. 1991).

The evidence was sufficient to support a finding that $16,700 cash found in the defendant's automobile had been used or was intended for use in violation of the Uniform Controlled Substances Law (§§ 41-29-101 et seg.), and was therefore subject to forfeiture, where the cash was in mostly 20 dollar and 50 dollar denominations, it was found in a "Crown Royal" velvet bag, plastic "Ziploc" bags, 2 spare tires, and 2 rolls of gray duct tape were also found in the defendant's automobile, and an employee of the Mississippi Bureau of Narcotics testified that it was common to see 20 dollar and 50 dollar denominations used in drug trafficking and that the other items found in the defendant's automobile were also commonly used in narcotics trafficking. Hickman v. State, 592 So. 2d 44, 1991 Miss. LEXIS 847 (Miss. 1991).

The forfeiture of a defendant's automobile pursuant to § 41-29-153(a)(4) was improper where the defendant deliberately intended not to use his automobile when he purposely took his nephew's car to meet a third party in order to procure cocaine. Bechtel Corp. v. Phillips, 591 So. 2d 814, 1991 Miss. LEXIS 838 (Miss. 1991).

2. Drug paraphernalia.

Court erred in determining that cash found during a police search of appellant's bedroom was forfeitable under Miss. Code Ann. § 41-29-153(a)(7) on the ground that it was found in close proximity to drug paraphernalia because no evidence supported the finding that a brass container attached to a Brillo pad, a piece of foil with holes in it, and plastic bags qualified as drug paraphernalia. Evans v. City of Aberdeen, 925 So. 2d 850, 2005 Miss. App. LEXIS 290 (Miss. Ct. App. 2005), aff'd, 926 So. 2d 181, 2006 Miss. LEXIS 120 (Miss. 2006).

3. Innocent owner defense.

Claimant lacked standing with respect to a claim to forfeited currency seized following a controlled substance arrest where his only claim of ownership was his uncorroborated testimony that he had given the currency to the arrestee, and the trial court had found that his testimony lacked credibility. Six Thousand Dollars ($6,000) v. State ex rel. Miss. Bureau of Narcotics, 179 So. 3d 1, 2015 Miss. LEXIS 444 (Miss. 2015).

Although appellant, who contested the forfeiture of $6,000 seized by the Mississippi Bureau of Narcotics, raised the innocent owner defense, appellant failed to make a prima facie case that he possessed an ownership interest in the seized currency. The only evidence, aside from evidence documenting his back-injury settlement, that appellant produced in support of his claim was his own testimony, which the trial court found not to be credible. Six Thousand Dollars ($6,000) v. State ex rel. Miss. Bureau of Narcotics, 179 So. 3d 7, 2014 Miss. App. LEXIS 542 (Miss. Ct. App. 2014), aff'd, 179 So. 3d 1, 2015 Miss. LEXIS 444 (Miss. 2015).

Preponderance of the evidence did not support a finding that appellant claimant knew of or consented to her son's use of her vehicle for drug-related activities; after the claimant and her husband suspected that the son was stealing the husband's medications, they took numerous measures to stop him from doing so (including having the medicine held at the post office and carrying the medicine with them in a bag), and the son did not have a driver's license and was not allowed to drive the vehicle. 1994 Mercury Cougar v. Tishomingo County, 970 So. 2d 744, 2007 Miss. App. LEXIS 823 (Miss. Ct. App. 2007).

Straw person was not "owner" of automobile for purposes of innocent owner defense to forfeiture. One Ford Mustang Convertible v. State ex rel. Clay County Sheriff's Dep't, 676 So. 2d 905, 1996 Miss. LEXIS 311 (Miss. 1996).

If owner of property proves illegal act was committed or omitted without his knowledge or consent, then property is not subject to forfeiture. One Ford Mustang Convertible v. State ex rel. Clay County Sheriff's Dep't, 676 So. 2d 905, 1996 Miss. LEXIS 311 (Miss. 1996).

Definition of "owner" in Motor Vehicle Title Law establishes prima facie case of ownership, for purposes of innocent owner defense to forfeiture proceeding; this presumption is rebuttable. One Ford Mustang Convertible v. State ex rel. Clay County Sheriff's Dep't, 676 So. 2d 905, 1996 Miss. LEXIS 311 (Miss. 1996).

Son's occasional possession and use of father's automobile does not subject automobile to forfeiture when son transports marijuana in automobile and sells marijuana to state narcotics agent where record title is in father, who testifies without contradiction that son was not permitted use of vehicle at time of sale of marijuana and that father had no knowledge of illegal use of vehicle by son. Saik v. State, 473 So. 2d 188, 1985 Miss. LEXIS 2154 (Miss. 1985).

If the owner of an automobile used to facilitate the illegal transportation, sale, receipt, possession, or concealment of certain controlled substances files a verified answer in response to a petition for forfeiture pursuant to § 41-29-153, denying that his automobile is subject to forfeiture, § 41-29-179 places upon the state the burden of proving the propriety of the forfeiture by a preponderance of the evidence; moreover, facts merely creating a suspicion that the owner had knowledge of the driver's illegal activity are inadequate to support a forfeiture and, accordingly, the facts that the vehicle owner's husband occasionally used her automobile, that he had access to her keys, and that she knew of his eight-year-old drug-related conviction were insufficient to warrant forfeiture of her car. Ervin v. State, 434 So. 2d 1324, 1983 Miss. LEXIS 2614 (Miss. 1983).

4. Proximity presumption.

Trial court did not err in finding that currency was subject to forfeiture because all of the money seized was found near a large quantity of synthetic cannabinoids; the trial court found that the quantity of synthetic cannabinoids indicated its use for sale, and as such, defendant's reasons for having a large quantity of cash were not plausible. Murshid v. State ex rel. Miss. Bureau of Narcotics, — So. 3d —, 2018 Miss. App. LEXIS 226 (Miss. Ct. App. May 8, 2018).

Trial court's findings that seized currency was found in close proximity to controlled substances and that appellant failed to rebut the presumption that the currency was subject to forfeiture were supported by substantial, credible, and reasonable evidence. Six Thousand Dollars ($6,000) v. State ex rel. Miss. Bureau of Narcotics, 179 So. 3d 7, 2014 Miss. App. LEXIS 542 (Miss. Ct. App. 2014), aff'd, 179 So. 3d 1, 2015 Miss. LEXIS 444 (Miss. 2015).

Forfeiture of money was not grossly disproportionate to the amount of marijuana that was found in a vehicle because the value of the illegal drugs involved would have been approximately equal to the value of the money; through the statutory presumption and other evidence, the money was shown to either be the proceeds of a recent drug sale or to be intended for the purchase of drugs. Twenty Thousand Eight Hundred Dollars $20,800.00 in U.S. Currency v. State ex rel. Miss. Bureau of Narcotics, 115 So. 3d 137, 2013 Miss. App. LEXIS 326 (Miss. Ct. App. 2013).

Trial court did not err in applying the presumption contained in subsection (a)(7), and claimants did not rebut the presumption because money was found in bundles on a claimant's person, in a suitcase in the back seat of a vehicle, and in the center console, and claimants had no documentation for the cash; claimants had tattoos that were associated with a gang known for drug trafficking, and the trial court did not find their testimony credible. Twenty Thousand Eight Hundred Dollars $20,800.00 in U.S. Currency v. State ex rel. Miss. Bureau of Narcotics, 115 So. 3d 137, 2013 Miss. App. LEXIS 326 (Miss. Ct. App. 2013).

Where $4,801 in cash was found in defendant's bedroom, along with and in close proximity to, marijuana and multiple items of drug paraphernalia, and there was testimony questioning the veracity of his assertions as to how much of the money was from illicit sources, the Circuit court did not err in ruling that the defendant had failed to overcome the proximity presumption of Miss. Code Ann. § 41-29-153(a)(7) and ordering the forfeiture of the cash Four Thousand Eight Hundred One Dollars v. Lafayette County Metro Narcotics Unit, 22 So. 3d 394, 2009 Miss. App. LEXIS 852 (Miss. Ct. App. 2009).

5. Exclusions.

Trial court erred when it granted the forfeiture of a vehicle used by a defendant and owned by defendant's sister in which drugs were found. Since the indictment and the Mississippi Crime Laboratory's report clearly established that the amount of marijuana recovered in the search of the vehicle was 238.6 grams, the proper charge was under Miss. Code Ann. § 41-29-139(c)(2)(C), not under § 41-29-139(c)(2)(D); thus, as a matter of law, the quantity of marijuana recovered and charged was statutorily excluded from forfeiture under Miss. Code Ann. § 41-29-153(a)(4)(D). Jefferson v. City of Kosciusko, 111 So. 3d 1253, 2013 Miss. App. LEXIS 167 (Miss. Ct. App. 2013).

OPINIONS OF THE ATTORNEY GENERAL

Money in forfeiture accounts can be used to increase law enforcement resources by purchasing liens or other interests of innocent third parties in forfeited personal property so that the property can be released for the use of the law enforcement agency. 1992 Miss. Op. Att'y Gen. 778.

A city could institute a forfeiture action with regard to cash found on the person of a dead suspected local drug dealer where the deceased's mother was believed to have resided in California, there had been no contact with her since 1996, she was believed to have died, and it was unknown whether the deceased had any other relatives. 2000 Miss. Op. Att'y Gen. 638.

A prosecutor's actions in initiating and pursuing a civil proceeding for the forfeiture of criminal property are entitled to absolute immunity. 2003 Miss. Op. Att'y Gen. 592.

RESEARCH REFERENCES

ALR.

Sufficiency of prosecution proof that substance defendant is charged with possessing or selling, or otherwise unlawfully dealing in, is marijuana. 75 A.L.R.3d 717.

Forfeiture of money to state or local authorities based on its association with or proximity to other contraband. 38 A.L.R.4th 496.

Forfeitability of property held in marital estate under Uniform Controlled Substances Act or similar statute. 84 A.L.R.4th 620.

Timeliness of institution of proceedings for forfeiture under Uniform Controlled Substances Act or similar statute. 90 A.L.R.4th 493.

Effect of forfeiture proceedings under Uniformed Controlled Substances Act or similar statute on lien against property subject to forfeiture. 1 A.L.R.5th 317.

Forfeitability of property, under Uniform Controlled Substances Act or similar statute, where property or evidence supporting forfeiture was illegally seized. 1 A.L.R.5th 346.

Application of forfeiture provisions of Uniform Controlled Substances Act of similar statute where drugs were possessed for personal use. 1 A.L.R.5th 375.

Forfeitability of property under Uniform Controlled Substances Act or similar statute where amount of controlled substance seized is small. 6 A.L.R.5th 652.

Delay in setting hearing date or in holding hearing as affecting forfeitability under Uniform Controlled Substances Act or similar statute. 6 A.L.R.5th 711.

Validity, construction, and application of state or local law prohibiting maintenance of vehicle for purpose of keeping or selling controlled substances. 31 A.L.R.5th 760.

Propriety of search of nonoccupant visitor's belongings pursuant to warrant issued for another's premises. 51 A.L.R.5th 375.

Admissibility of evidence discovered in search of adult defendant's property or residence authorized by defendant's minor child – state cases. 51 A.L.R.5th 425.

Burden of proof and presumptions in tracing currency, bank account, or cash equivalent to illegal drug trafficking so as to permit forfeiture, or declaration as contraband, under state law. 104 A.L.R.5th 229.

Evidence considered in tracing currency, bank account, or cash equivalent to illegal drug trafficking so as to permit forfeiture, or declaration as contraband, under state law – Proximity of asset to drugs, paraphernalia, or records. 115 A.L.R.5th 403.

Evidence considered in tracing currency, bank account, or cash equivalent to illegal drug trafficking so as to permit forfeiture, or declaration as contraband, under state law – Odor of drugs. 116 A.L.R.5th 325.

Forfeiture of personal property used in illegal manufacture, processing, or sale of controlled substances under § 511 of Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 USCS § 881). 59 A.L.R. Fed. 765.

Who is exempt from forfeiture of drug proceeds under "innocent owner" provision of 21 USCS § 881(a)(7) [redesignated as 21 USCS § 889]. 109 A.L.R. Fed. 322.

Who is exempt from forfeiture of real property under "innocent owner" provision of 21 USCS § 881(a)(7). 110 A.L.R. Fed. 569.

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 221 et seq.

CJS.

28 C.J.S., Drugs and Narcotics §§ 233, 235 et seq.

72 C.J.S., Poisons § 7.

Lawyers' Edition.

Warrantless search of marijuana fields by police officers held permissible under open fields doctrine. 80 L. Ed. 2d 214.

Law Reviews.

1979 Mississippi Supreme Court Review: Criminal Law and Procedure. 50 Miss. L. J. 763, December 1979.

Payne, An introduction to civil forfeiture in Mississippi: An effective law enforcement tool or cash register justice? 59 Miss. L. J. 453, Fall 1989.

Practice References.

Smith, Prosecution and Defense of Forfeiture Cases (Matthew Bender).

§ 41-29-154. Disposition of seized controlled substances and paraphernalia.

Any controlled substance or paraphernalia seized under the authority of this article or any other law of Mississippi or of the United States, shall be destroyed, adulterated and disposed of or otherwise rendered harmless and disposed of, upon written authorization of the director, after such substance or paraphernalia has served its usefulness as evidence or after such substance or paraphernalia is no longer useful for training or demonstration purposes.

A record of the disposition of such substances and paraphernalia and the method of destruction or adulteration employed along with the names of witnesses to such destruction or adulteration shall be retained by the director.

No substance or paraphernalia shall be disposed of, destroyed or rendered harmless under the authority of this section without an order from the director and without at least two (2) officers or agents of the bureau present as witnesses.

HISTORY:

Codes, 1942, § 6831-93; Laws, 1972, ch. 520, § 19; Laws, 1982, ch. 323, § 4; Laws, 1988, ch. 448, eff from and after July 1, 1990.

Editor's Notes —

Laws of 1992, ch. 453, § 1, amended Laws of 1988, ch. 448, § 2, changing the effective date of chapter 448 from July 1, 1988, to July 1, 1990.

Cross References —

Procedure involved in disposing of property seized under this chapter, see §§ 41-29-177 through 41-29-183.

Disposition of seized property under the Uniform Controlled Substances Law, see §§ 41-29-177 et seq.

Court order directing destruction of seized property, see § 41-29-181.

JUDICIAL DECISIONS

1. In general.

Where, in the process of determining what drug or drugs were contained in LSD tablet sold by defendant to agent, it was reasonably necessary to consume the entire tablet in the process of determining what drug or drugs were contained therein, and there was no proof of an attempt by the state to exhaust the tablet in order to deprive defendant of the right to inspection and analysis, there was no denial of due process requiring dismissal of charges. Poole v. State, 291 So. 2d 723, 1974 Miss. LEXIS 1741 (Miss.), cert. denied, 419 U.S. 1019, 95 S. Ct. 492, 42 L. Ed. 2d 292, 1974 U.S. LEXIS 3353 (U.S. 1974).

The purpose of § 41-29-154 is to authorize the state to destroy drugs intentionally after such substances are no longer needed for evidence, and there is no indication that the statute should be construed so as to prohibit the exhaustion of the substance during chemical analysis. Poole v. State, 291 So. 2d 723, 1974 Miss. LEXIS 1741 (Miss.), cert. denied, 419 U.S. 1019, 95 S. Ct. 492, 42 L. Ed. 2d 292, 1974 U.S. LEXIS 3353 (U.S. 1974).

OPINIONS OF THE ATTORNEY GENERAL

A law enforcement agency should contact the Director of the Bureau of Narcotics for the use of forfeited controlled substances for training or demonstration purposes under §§ 41-29-154 and 41-29-181. 1999 Miss. Op. Att'y Gen. 169.

RESEARCH REFERENCES

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 221 et seq.

CJS.

28 C.J.S., Drugs and Narcotics §§ 233, 235 et seq.

Practice References.

Smith, Prosecution and Defense of Forfeiture Cases (Matthew Bender).

Defense of Narcotics Cases (Matthew Bender).

Gurule and Guerra, The Law of Asset Forfeiture (Michie).

§ 41-29-155. Injunctions.

The trial courts of this state shall have jurisdiction to restrain or enjoin violations of this article.

The defendant may demand trial by jury for an alleged violation of an injunction or restraining order under this section.

HISTORY:

Codes, 1942, § 6831-77; Laws, 1971, ch. 521, § 27, eff from and after passage (approved April 16, 1971).

Cross References —

Injunctions, generally, see §§ 11-13-1 et seq.

RESEARCH REFERENCES

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances § 202.

Practice References.

Smith, Prosecution and Defense of Forfeiture Cases (Matthew Bender).

§ 41-29-157. Administrative inspection warrants and search warrants.

(a) Except as otherwise provided in Section 41-29-107.1, issuance and execution of administrative inspection warrants and search warrants shall be as follows, except as provided in subsection (c) of this section:

(1) A judge of any state court of record, or any justice court judge within his jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this article or rules thereunder, and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this article or rules thereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant. All such warrants shall be served during normal business hours;

(2) A search warrant shall issue only upon an affidavit of a person having knowledge or information of the facts alleged, sworn to before the judge or justice court judge and establishing the grounds for issuing the warrant. If the judge or justice court judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building or conveyance to be searched, the purpose of the search, and, if appropriate, the type of property to be searched, if any. The warrant shall:

(A) State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;

(B) Be directed to a person authorized by Section 41-29-159 to execute it;

(C) Command the person to whom it is directed to inspect the area, premises, building or conveyance identified for the purpose specified, and if appropriate, direct the seizure of the property specified;

(D) Identify the item or types of property to be seized, if any;

(E) Direct that it be served and designate the judge or magistrate to whom it shall be returned;

(3) A warrant issued pursuant to this section must be executed and returned within ten (10) days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one (1) credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant;

(4) The judge or justice court judge who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of the appropriate state court for the judicial district in which the inspection was made.

(b) The Mississippi Bureau of Narcotics, the State Board of Pharmacy, the State Board of Medical Licensure, the State Board of Dental Examiners, the Mississippi Board of Nursing or the State Board of Optometry may make administrative inspections of controlled premises in accordance with the following provisions:

(1) For purposes of this section only, "controlled premises" means:

(A) Places where persons registered or exempted from registration requirements under this article are required to keep records; and

(B) Places including factories, warehouses, establishments and conveyances in which persons registered or exempted from registration requirements under this article are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

(2) When authorized by an administrative inspection warrant issued in accordance with the conditions imposed in this section, an officer or employee designated by the Mississippi Bureau of Narcotics, the State Board of Pharmacy, the State Board of Medical Licensure, the State Board of Dental Examiners, the Mississippi Board of Nursing or the State Board of Optometry, upon presenting the warrant and appropriate credentials to the owner, operator or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(3) When authorized by an administrative inspection warrant, an officer or employee designated by the Mississippi Bureau of Narcotics, the State Board of Pharmacy, the State Board of Medical Licensure, the State Board of Dental Examiners, the Mississippi Board of Nursing or the State Board of Optometry may:

(A) Inspect and copy records required by this article to be kept;

(B) Inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in paragraph (5) of this subsection, all other things therein, including records, files, papers, processes, controls and facilities bearing on violation of this article; and

(C) Inventory any stock of any controlled substance therein and obtain samples thereof.

(4) This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:

(A) If the owner, operator or agent in charge of the controlled premises consents;

(B) In situations presenting imminent danger to health or safety;

(C) In situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(D) In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or

(E) In all other situations in which a warrant is not constitutionally required.

(5) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator or agent in charge of the controlled premises consents in writing.

(c) Any agent of the bureau authorized to execute a search warrant involving controlled substances, the penalty for which is imprisonment for more than one (1) year, may, without notice of his authority and purpose, break open an outer door or inner door, or window of a building, or any part of the building, if the judge issuing the warrant:

(1) Is satisfied that there is probable cause to believe that:

(A) The property sought may, and, if such notice is given, will be easily and quickly destroyed or disposed of; or

(B) The giving of such notice will immediately endanger the life or safety of the executing officer or another person; and

(2) Has included in the warrant a direction that the officer executing the warrant shall not be required to give such notice.

Any officer acting under such warrant shall, as soon as practical, after entering the premises, identify himself and give the reasons and authority for his entrance upon the premises.

Search warrants which include the instruction that the executing officer shall not be required to give notice of authority and purpose as authorized by this subsection shall be issued only by the county court or county judge in vacation, chancery court or by the chancellor in vacation, by the circuit court or circuit judge in vacation, or by a justice of the Mississippi Supreme Court.

This subsection shall expire and stand repealed from and after July 1, 1974, except that the repeal shall not affect the validity or legality of any search authorized under this subsection and conducted prior to July 1, 1974.

HISTORY:

Codes, 1942, § 6831-76; Laws, 1971, ch. 521, § 26; Laws, 1972, ch. 520, § 11; Laws, 1981, ch. 502, § 14; Laws, 1992, ch. 580, § 5; Laws, 2001, ch. 470, § 4; Laws, 2005, ch. 404, § 8; Laws, 2017, ch. 329, § 4, eff from and after July 1, 2017.

Amendment Notes —

The 2017 amendment added “Except as otherwise privded in Section 41-29-107.1” in (a).

Cross References —

Constitutional provision for search and seizure, see Miss. Const Art. 3, § 23.

Authority of state board of pharmacy to inspect facilities and records of pharmacy, drug manufacturer or wholesaler, see § 73-21-107.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Invalid search warrant.
3. Exigent circumstances.

1. In general.

While Miss. Code Ann. § 41-29-157(a)(3) clearly dictated defendant should have received a copy of the warrant, the supreme court has never held that failure to follow this procedure constituted reversible error or voided an otherwise valid search. Chester v. State, 935 So. 2d 976, 2006 Miss. LEXIS 368 (Miss. 2006).

Probable cause existed for the issuance of a search warrant for a defendant's residence, in spite of the defendants' argument that an informant's personal observation of marijuana at the residence 2 weeks earlier was stale and too remote, where 2 narcotics agents saw a sale of marijuana, which came from one of the defendants and from the house in question on the day of the search. Williams v. State, 583 So. 2d 620, 1991 Miss. LEXIS 396 (Miss. 1991).

A defendant in a criminal proceeding has the right, under the Fourth and Fourteenth Amendments of the U.S. Constitution, to challenge the truthfulness of factual statements made in an affidavit supporting a search warrant subsequent to the ex parte issuance of such warrant provided: (1) There are allegations of deliberate falsehood or of reckless disregard for the truth and such allegations are accompanied by an offer of proof; (2) Portions of the warrant affidavit that are claimed to be false are specifically pointed out and accompanied by a statement of supporting reasons; (3) Sworn affidavits or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained. Franks v. Delaware, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667, 1978 U.S. LEXIS 127 (U.S. 1978).

The judgment of the trial court in allowing a search warrant to be introduced would not be reversed merely because there was a conflict in the testimony as to whether or not a copy was delivered to the defendant. An abuse of judicial discretion must be shown by the great weight of the testimony. Wood v. State, 322 So. 2d 462, 1975 Miss. LEXIS 1542 (Miss. 1975).

A return two days after the warrant was served was not a breach of the statutory requirements that warrants should be promptly returned. Roberts v. Mississippi State Highway Com., 309 So. 2d 161, 1975 Miss. LEXIS 1865 (Miss. 1975).

2. Invalid search warrant.

Miss. Code Ann. § 41-29-157(a)(2) requires the affiant's and the affidavit's presence before the issuing magistrate before a search warrant may properly issue and under Miss. Code Ann. § 99-25-15, the form of an affidavit for a search warrant indicates the presence of the affiant at issuance; thus, the telephonic search warrant was invalid and the search of defendant's apartment was a warrantless search, but the officers, who did not intend to make an arrest, but only to preserve evidence, acted reasonably in exigent circumstances. White v. State, 2002 Miss. LEXIS 311 (Miss. Oct. 24, 2002).

3. Exigent circumstances.

Officers had probable cause to believe that defendant was dealing marijuana, they were attempting to prevent the destruction of evidence instead of effectuating arrest and seizure, and they reasonably believed in good faith that they had a valid telephonic search warrant and were acting reasonably in the midst of exigent circumstances; thus, the trial court, even in the absence of a state statute allowing telephonic search warrants, properly upheld the search as a reasonable warrantless search. White v. State, 2002 Miss. LEXIS 311 (Miss. Oct. 24, 2002).

RESEARCH REFERENCES

ALR.

Permitting unlawful use of narcotics in private home as criminal offense. 54 A.L.R.3d 1297.

Odor of narcotics as providing probable cause for warrantless search. 5 A.L.R.4th 681.

Propriety of stop and search by law enforcement officers based solely on drug courier profile. 37 A.L.R.5th 1.

Propriety of search of nonoccupant visitor's belongings pursuant to warrant issued for another's premises. 51 A.L.R.5th 375.

Validity of police roadblocks or checkpoints for purpose of discovery of illegal narcotics violations. 82 A.L.R.5th 103.

What circumstances fall within "inevitable discovery" exception to rule precluding admission, in criminal case, of evidence obtained in violation of Federal Constitution. 81 A.L.R. Fed. 331.

Am. Jur.

25 Am. Jur. 2d, Drugs, Narcotics, and Poisons § 202.

1 Am. Jur. Trials 555, Locating and Preserving Evidence in Criminal Cases, §§ 30-50.

2 Am. Jur. Trials 171, Investigating Particular Crimes, §§ 60-63.

Practice References.
Smith, Prosecution and Defense of Forfeiture Cases (Matthew Bender).

§ 41-29-159. Powers of enforcement personnel; duty of certain individuals to notify Bureau of Narcotics of death caused by drug overdose.

(a) Any officer or employee of the Mississippi Bureau of Narcotics, investigative unit of the State Board of Pharmacy, investigative unit of the State Board of Medical Licensure, investigative unit of the State Board of Dental Examiners, investigative unit of the Mississippi Board of Nursing, investigative unit of the State Board of Optometry, any duly sworn peace officer of the State of Mississippi, any enforcement officer of the Mississippi Department of Transportation, or any highway patrolman, may, while engaged in the performance of his statutory duties:

(1) Carry firearms;

(2) Execute and serve search warrants, arrest warrants, subpoenas, and summonses issued under the authority of this state;

(3) Make arrests without warrant for any offense under this article committed in his presence, or if he has probable cause to believe that the person to be arrested has committed or is committing a crime; and

(4) Make seizures of property pursuant to this article.

(b) As divided among the Mississippi Bureau of Narcotics, the State Board of Pharmacy, the State Board of Medical Licensure, the State Board of Dental Examiners, the Mississippi Board of Nursing and the State Board of Optometry, the primary responsibility of the illicit street traffic or other illicit traffic of drugs is delegated to agents of the Mississippi Bureau of Narcotics. The State Board of Pharmacy is delegated the responsibility of regulating and checking the legitimate drug traffic among pharmacists, pharmacies, hospitals, nursing homes, drug manufacturers, and any other related professions and facilities with the exception of the medical, dental, nursing, optometric and veterinary professions. The State Board of Medical Licensure is responsible for regulating and checking the legitimate drug traffic among physicians, podiatrists and veterinarians. The Mississippi Board of Dental Examiners is responsible for regulating and checking the legitimate drug traffic among dentists and dental hygienists. The Mississippi Board of Nursing is responsible for regulating and checking the legitimate drug traffic among nurses. The State Board of Optometry is responsible for regulating and checking the legitimate drug traffic among optometrists.

(c) The provisions of this section shall not be construed to limit or preclude the detection or arrest of persons in violation of Section 41-29-139 by any local law enforcement officer, sheriff, deputy sheriff or peace officer.

(d) Agents of the bureau are authorized to investigate the circumstances of deaths which are caused by drug overdose or which are believed to be caused by drug overdose, and health-care providers, coroners and law enforcement officers shall notify the bureau of any death caused by a drug overdose within twenty-four (24) hours.

(e) Any person who shall impersonate in any way the director or any agent, or who shall in any manner hold himself out as being, or represent himself as being, an officer or agent of the Mississippi Bureau of Narcotics shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00) or by imprisonment for not more than one (1) year, or by both such fine and imprisonment.

HISTORY:

Codes, 1942, § 6831-75; Laws, 1971, ch. 521, § 25; Laws, 1972, ch. 520, § 10; Laws, 1981, ch. 502, § 15; Laws, 1983, ch. 488, § 38; Laws, 1999, ch. 417, § 2; Laws, 2001, ch. 470, § 5; Laws, 2005, ch. 404, § 9; Laws, 2007, ch. 311, § 1, eff from and after July 1, 2007.

Cross References —

Bureau of narcotics, generally, see §§ 41-29-107 et seq.

Powers of special contract investigator or agent retained by the director of the bureau of narcotics, see § 41-29-112.

Issuance of search warrants, see § 41-29-157.

Mississippi Highway Safety Patrol, generally, see §§ 45-3-1 et seq.

State board of dental examiners, generally, see §§ 73-9-1 et seq.

State board of medical licensure, generally, see §§ 73-43-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Imposition of state assessment in addition to all other state assessments due under § 99-19-73 and all court imposed fines or other penalties for any violation of § 41-29-139, see § 99-19-73.

OPINIONS OF THE ATTORNEY GENERAL

Under Section 41-29-159, agents of the Mississippi Bureau of Narcotics have the authority to execute a grand jury capias and arrest defendants indicted for violations of the Uniform Controlled Substances Law. 1996 Miss. Op. Att'y Gen. 622.

RESEARCH REFERENCES

ALR.

Authority of Public Official, Whose Duties or Functions Generally Do Not Entail Traffic Stops, To Effectuate Traffic Stop of Vehicle. 18 A.L.R.6th 519.

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 197 et seq.

CJS.

72 C.J.S., Poisons § 9.

Practice References.

Smith, Prosecution and Defense of Forfeiture Cases (Matthew Bender).

§ 41-29-160. Payments to informers; disposition of moneys expended for purchase of controlled substances.

The director is authorized to pay any person such sum or sums of money as he may deem appropriate for information concerning a violation of this article from funds appropriated for the bureau of narcotics.

Moneys expended from the funds of the bureau for the purchase of controlled substances, and subsequently recovered shall be returned to the account from which they were originally drawn for such purpose. Detailed records and accounts of the use and disposition of such funds shall be kept by the director.

HISTORY:
Codes, 1942, § 6831-91; Laws, 1972, ch. 520, § 17, eff from and after passage (approved May 19, 1972).

JUDICIAL DECISIONS

1. In general.
Conviction for sale of marijuana may be based upon evidence provided by confidential informant who is former drug offender and is paid on contingency fee basis so long as full facts and circumstances of fee arrangement are disclosed to jury and witness is subject to cross-examination. Williams v. State, 463 So. 2d 1064, 1985 Miss. LEXIS 1876 (Miss. 1985).

RESEARCH REFERENCES

ALR.
Adverse presumption or inference based on state's failure to produce or examine informant in criminal prosecution – modern cases. 80 A.L.R.4th 547.

§ 41-29-161. Bonds of bureau officers and employees.

Any officer or employee of the Mississippi Bureau of Drug Enforcement who is authorized to investigate, carry firearms, serve search warrants, and do all things as set forth in this article shall prior to entering upon the discharge of his duties enter into a good and sufficient surety bond in the sum of Ten Thousand Dollars ($10,000.00) with a surety company authorized and doing business within the State of Mississippi. The said bond herein is conditioned upon the faithful performance of the duties of his office. All premiums shall be paid as are other expenses of the bureau.

HISTORY:
Codes, 1942, § 6831-84; Laws, 1971, ch. 521, § 34, eff from and after passage (approved April 16, 1971).

Cross References —
"Mississippi Bureau of Drug Enforcement" means the bureau of narcotics, see § 41-29-105(d).

§ 41-29-163. Judicial review of final determinations, findings and conclusions.

All final determinations, findings and conclusions of the board, the bureau or the State Board of Pharmacy under this article are final and conclusive decisions of the matters involved. Except as otherwise provided by Section 41-29-176, any person aggrieved by the decision may obtain review of the decision in the chancery court.

HISTORY:
Codes, 1942, § 6831-80; Laws, 1971, ch. 521, § 30; Laws, 1972, ch. 520, § 13; Laws, 1988, ch. 474, § 2, eff from and after July 1, 1988.

Editor's Note —
Section 41-29-176, referred in this section, was repealed by Section 2 of Chapter 484, Laws of 2013, as amended by Section 5 of Chapter 501, Laws of 2014, and as amended by Section 23 of Chapter 452, Laws of 2015, effective July 1, 2018.

RESEARCH REFERENCES

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 204, 205..

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 23 et seq. (petition or application – for judicial review of licensing authority's grant of a license to another – by existing license holder).

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 43-46, 48 (revocation or suspension).

§ 41-29-165. Judicial review of convictions and orders.

Any person being aggrieved by any conviction or order of any board or commission authorized under this article shall have a right to appeal from said order or conviction to the circuit court of the county of the residence of the defendant or of the county where the offense was committed. Said appeal shall be tried de novo. Appeals taken under this article shall be perfected as all other appeals to the circuit court.

HISTORY:

Codes, 1942, § 6831-85; Laws, 1971, ch. 521, § 35, eff from and after passage (approved April 16, 1971).

§ 41-29-167. Cooperative arrangements.

(a) The State Board of Medical Licensure, the Mississippi Bureau of Narcotics, the State Board of Pharmacy, the State Board of Dental Examiners, the Mississippi Board of Nursing and the State Board of Optometry shall cooperate with federal and other state agencies in discharging their responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, they may:

(1) Arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;

(2) Coordinate and cooperate in training programs concerning controlled substance law enforcement at local and state levels;

(3) Cooperate with the United States Drug Enforcement Administration by establishing a centralized unit to accept, catalogue, file and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the state, and make the information available for federal, state and local law enforcement purposes; and

(4) Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

(b) Results, information and evidence received from the United States Drug Enforcement Administration relating to the regulatory functions of this article, including results of inspections conducted by it may be relied and acted upon by the Mississippi Bureau of Narcotics, the State Board of Pharmacy, the State Board of Medical Licensure, the State Board of Dental Examiners, the Mississippi Board of Nursing and the State Board of Optometry in the exercise of their regulatory functions under this article.

HISTORY:

Codes, 1942, § 6831-78; Laws, 1971, ch. 521, § 28; Laws, 1983, ch. 522, § 16; Laws, 2001, ch. 470, § 6; Laws, 2005, ch. 404, § 10, eff from and after July 1, 2005.

Cross References —

State board of dental examiners, see § 73-9-7.

State board of medical licensure, see §§ 73-43-1 et seq.

RESEARCH REFERENCES

ALR.

Application, to drug or narcotic records maintained by druggist or physician, of "required records" exception to privilege against self-incrimination. 96 A.L.R. Fed. 868.

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 19- 28, 103.

§ 41-29-168. Required reports.

(1) Every sheriff, chief of police or constable or other peace officer in this state and the identification bureau of the highway safety patrol is hereby required to report to the bureau all arrests, incidences and information involving or connected with controlled substances.

(2) The owner, manager, practitioner, or any other person having possession or custody of controlled substances or of premises on which controlled substances are stored or located, whether or not such person is a registrant under Section 41-29-125, is hereby required to report to the bureau any theft, burglary, robbery or attempted theft, burglary or robbery of such premises or substance, or the mysterious disappearance of any controlled substance within forty-eight (48) hours of the discovery of such occurrence or disappearance.

(3) The director shall promulgate appropriate procedures and shall supply forms to facilitate the reports as required by subsections (1) and (2) of this section.

(4) It shall be unlawful for any person required to submit reports under subsection (2) of this section to omit to do so or to knowingly submit a false or incorrect report, in whole or in part, and upon conviction such person shall be guilty of a misdemeanor and shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00) and may be confined for not more than thirty (30) days.

HISTORY:

Codes, 1942, § 6831-89; Laws, 1972, ch. 520, § 15, eff from and after July 1, 1972.

Cross References —

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 41-29-169. Drug abuse education programs.

The Mississippi Bureau of Drug Enforcement and state board of education shall carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs they may:

(1) Promote better recognition of the problems of misuse and abuse of

controlled substances within the regulated industry and among interested groups and organizations;

(2) Assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(3) Consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(4) Evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

(5) Disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and

(6) Assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

HISTORY:

Codes, 1942, § 6831-81; Laws, 1971, ch. 521, § 31, eff from and after passage (approved April 16, 1971).

Cross References —

State board of education, generally, see §§ 37-1-1 et seq.

Establishment of State Board of Mental Health and State Department of Mental Health in connection with services provided for drug dependent persons, see §§ 41-4-1 et seq.

"Mississippi Bureau of Drug Enforcement" meaning the bureau of narcotics, see § 41-29-105(d).

Commitment of alcoholics and drug addicts for treatment, see §§ 41-31-1 et seq.

§ 41-29-171. Research programs on misuse and abuse of controlled substances.

(a) The Mississippi Bureau of Narcotics, the State Board of Pharmacy, the State Board of Medical Licensure, the State Board of Dental Examiners, the Mississippi Board of Nursing and the State Board of Optometry shall encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of this article they may:

(1) Establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) Make studies and undertake programs of research to:

(A) Develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this article;

(B) Determine patterns of misuse and abuse of controlled substances and the social effects thereof; and

(C) Improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of controlled substances;

(3) Enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

(b) The Mississippi Bureau of Narcotics and the State Board of Education may enter into contracts for educational and research activities without performance bonds.

(c) The board may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

HISTORY:

Codes, 1942, § 6831-82; Laws, 1971, ch. 521, § 32; Laws, 1983, ch. 522, § 17; Laws, 2001, ch. 470, § 7; Laws, 2005, ch. 404, § 11, eff from and after July 1, 2005.

Cross References —

"Mississippi Bureau of Drug Enforcement" meaning the bureau of narcotics, see § 41-29-105(d).

Commitment of alcoholics and drug addicts for treatment, see §§ 41-31-1 et seq.

State board of dental examiners, see § 73-9-7.

State board of medical licensure, see §§ 73-43-1 et seq.

§ 41-29-173. Effect of Uniform Controlled Substances Law on pending proceedings.

(a) Prosecutions for any violations under prior laws shall not be affected or abated by the provisions of this article. The penalty for any such violations shall be prescribed in accordance with subsection (d) of Section 41-29-149.

(b) Civil seizures or forfeitures and injunctive proceedings commenced prior to May 19, 1972, are not affected by this article.

(c) All administrative proceedings pending under prior laws which are superseded by this article shall be continued and brought to a final determination in accord with the laws and rules in effect prior to May 19, 1972. Any substance controlled under prior law which is not listed within Schedules I through V, being Sections 41-29-113 through 41-29-121, is automatically controlled without further proceedings and shall be listed in the appropriate schedule.

(d) The state board of pharmacy and state board of medical licensure shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution or dispensing of any controlled substance prior to May 19, 1972, and who are registered or licensed by the state.

(e) This article applies to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations which occur following May 19, 1972.

HISTORY:

Codes, 1942, § 6831-83; Laws, 1971, ch. 521, § 33; Laws, 1972, ch. 520, § 14; Laws, 1981, ch. 502, § 16, eff from and after July 1, 1981.

Cross References —

Sentencing or resentencing of persons indicted or convicted under prior law, see § 41-29-149.

JUDICIAL DECISIONS

1. In general.

Where the punishment for a violation involving the sale of marijuana was reduced under the Uniform Controlled Substances Law of 1971, which became effective April 16, 1971, the imposition of a punishment for an April 12, 1971, violation under the provisions of the 1971 Law would not be within the prohibition against enactment of ex post facto laws. Moore v. State, 264 So. 2d 414, 1972 Miss. LEXIS 1364 (Miss. 1972).

Under subsection (a) of Code 1942, § 6831-83, providing that the penalty for violations occurring prior to April 16, 1971, the effective date of the Uniform Controlled Substances Law of 1971, was to be prescribed in accordance with the 1971 Law, it was not inappropriate to refer to the 1971 Law in an indictment charging the sale of marijuana on April 2, 1971, since, if the sale of marijuana was not a violation under the 1971 Law, there would be no penalty to prescribe. Alston v. State, 258 So. 2d 436, 1972 Miss. LEXIS 1502 (Miss. 1972).

RESEARCH REFERENCES

ALR.

Who is exempt from forfeiture of drug proceeds under "innocent owner" provision of 21 USCS § 881(a)(7) [redesignated as 21 USCS § 889]. 109 A.L.R. Fed. 322.

Who is exempt from forfeiture of real property under "innocent owner" provision of 21 USCS § 881(a)(7). 110 A.L.R. Fed. 569.

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 221 et seq.

Practice References.

Smith, Prosecution and Defense of Forfeiture Cases (Matthew Bender).

§ 41-29-175. Continuation of regulations.

Any orders and rules promulgated under any law affected by this article and in effect on April 16, 1971, and not in conflict with the provisions of this article shall continue in effect until modified, superseded or repealed.

HISTORY:

Codes, 1942, § 6831-86; Laws, 1971, ch. 521, § 36, eff from and after passage (approved April 16, 1971).

RESEARCH REFERENCES

ALR.

Propriety of civil or criminal forfeiture of computer hardware or software. 39 A.L.R.5th 87.

§ 41-29-176. Repealed.

Repealed by Laws, 2013, ch. 484, § 2, as amended by Laws, 2014, ch. 501, § 5, and as amended by Laws, 2015, ch. 452, § 23, eff from and after July 1, 2018.

§ 41-29-176. [Laws, 1988, ch. 474, § 1; Laws, 1996, ch. 511, § 2; Laws, 2012, ch. 495, § 1; Laws, 2013, ch. 484, § 1; Laws, 2014, ch. 501, § 4; Laws, 2015, ch. 452, § 22; Laws, 2017, ch. 329, § 5, eff from and after July 1, 2017.]

Editor's Notes —

Former § 41-29-176 provided for forfeiture of property other than a controlled substance, raw material or paraphernalia with a value of less than $20,000.00.

§ 41-29-176.1. Prosecution of cases involving seized property.

The seizing law enforcement agency shall within thirty (30) days of a seizure, request either the district attorney of the county in which property is seized or the Mississippi Bureau of Narcotics to prosecute any cases involving seized property. No one other than the district attorney of the county in which the seizure occurred or an attorney from the Mississippi Bureau of Narcotics shall have authority to prosecute the forfeiture of the seized property. If the district attorney and the Mississippi Bureau of Narcotics decline to prosecute the forfeiture of the seized property, the seizing law enforcement agency shall notify the person from whom the property was seized that the property will not be forfeited, within thirty (30) days of receiving the notice not to prosecute, and shall provide written instructions advising the person how to retrieve the seized property.

HISTORY:
Laws, 2017, ch. 329, § 2, eff from and after July 1, 2017.

§ 41-29-177. Procedure for disposition of seized property; petition of forfeiture; inquiry into ownership; failure to discover owner.

(1) Except as otherwise provided in Section 41-29-176, Mississippi Code of 1972, and in Section 41-29-107.1, when any property, other than a controlled substance, raw material or paraphernalia, is seized under the Uniform Controlled Substances Law, proceedings under this section shall be instituted within thirty (30) days from the date of seizure or the subject property shall be immediately returned to the party from whom seized.

(2) A petition for forfeiture shall be filed by the district attorney or his or her designee, or an attorney for the bureau, as applicable, in the name of the State of Mississippi, the county or the municipality and may be filed in the county in which the seizure is made, the county in which the criminal prosecution is brought or the county in which the owner of the seized property is found. Forfeiture proceedings may be brought in the circuit court or the county court if a county court exists in the county and the value of the seized property is within the jurisdictional limits of the county court as set forth in Section 9-9-21, Mississippi Code of 1972. A copy of such petition shall be served upon the following persons by service of process in the same manner as in civil cases:

(a) The owner of the property, if address is known;

(b) Any secured party who has registered his lien or filed a financing statement as provided by law, if the identity of such secured party can be ascertained by the Bureau of Narcotics or the local law enforcement agency by making a good faith effort to ascertain the identity of such secured party as described in subsections (3), (4), (5), (6) and (7) of this section;

(c) Any other bona fide lienholder or secured party or other person holding an interest in the property in the nature of a security interest of whom the Mississippi Bureau of Narcotics or the local law enforcement agency has actual knowledge;

(d) Any holder of a mortgage, deed of trust, lien or encumbrance of record, if the property is real estate, by making a good faith inquiry as described in subsection (8) of this section; and

(e) Any person in possession of property subject to forfeiture at the time that it was seized.

(3) If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law and if there is any reasonable cause to

believe that the vehicle has been titled, the Bureau of Narcotics or the local law enforcement agency shall make inquiry of the Department of Revenue as to what the records of the Department of Revenue show as to who is the record owner of the vehicle and who, if anyone, holds any lien or security interest which affects the vehicle.

(4) If the property is a motor vehicle and is not titled in the State of Mississippi, then the Bureau of Narcotics or the local law enforcement agency shall attempt to ascertain the name and address of the person in whose name the vehicle is licensed, and if the vehicle is licensed in a state which has in effect a certificate of title law, the bureau or the local law enforcement agency shall make inquiry of the appropriate agency of that state as to what the records of the agency show as to who is the record owner of the vehicle and who, if anyone, holds any lien, security interest or other instrument in the nature of a security device which affects the vehicle.

(5) If the property is of a nature that a financing statement is required by the laws of this state to be filed to perfect a security interest affecting the property and if there is any reasonable cause to believe that a financing statement covering the security interest has been filed under the laws of this state, the Bureau of Narcotics or the local law enforcement agency shall make inquiry of the appropriate office designated in Section 75-9-501, Mississippi Code of 1972, as to what the records show as to who is the record owner of the property and who, if anyone, has filed a financing statement affecting the property.

(6) If the property is an aircraft or part thereof and if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, then the Bureau of Narcotics or the local law enforcement agency shall make inquiry of the Mississippi Department of Transportation as to what the records of the Federal Aviation Administration show as to who is the record owner of the property and who, if anyone, holds an instrument in the nature of a security device which affects the property.

(7) In the case of all other personal property subject to forfeiture, if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, then the Bureau of Narcotics or the local law enforcement agency shall make a good faith inquiry to identify the holder of any such instrument.

(8) If the property is real estate, the Bureau of Narcotics or the local law enforcement agency shall make inquiry of the chancery clerk of the county wherein the property is located to determine who is the owner of record and who, if anyone, is a holder of a bona fide mortgage, deed of trust, lien or encumbrance.

(9) In the event the answer to an inquiry states that the record owner of the property is any person other than the person who was in possession of it when it was seized, or states that any person holds any lien, encumbrance, security interest, other interest in the nature of a security interest, mortgage or deed of trust which affects the property, the Bureau of Narcotics or the local law enforcement agency shall cause any record owner and also any lienholder, secured party, other person who holds an interest in the property in the nature

of a security interest, or holder of an encumbrance, mortgage or deed of trust which affects the property to be named in the petition of forfeiture and to be served with process in the same manner as in civil cases.

(10) If the owner of the property cannot be found and served with a copy of the petition of forfeiture, or if no person was in possession of the property subject to forfeiture at the time that it was seized and the owner of the property is unknown, the Bureau of Narcotics or the local law enforcement agency shall file with the clerk of the court in which the proceeding is pending an affidavit to such effect, whereupon the clerk of the court shall publish notice of the hearing addressed to "the Unknown Owner of ________________," filling in the blank space with a reasonably detailed description of the property subject to forfeiture. Service by publication shall contain the other requisites prescribed in Section 11-33-41, and shall be served as provided in Section 11-33-37, Mississippi Code of 1972, for publication of notice for attachments at law.

(11) No proceedings instituted pursuant to the provisions of this article shall proceed to hearing unless the judge conducting the hearing is satisfied that this section and Section 41-29-107.1 has been complied with. Any answer received from an inquiry required by subsections (3) through (8) of this section shall be introduced into evidence at the hearing.

HISTORY:

Laws, 1979, ch. 473, § 1; Laws, 1982, ch. 323, § 5; Laws, 1985, ch. 388, § 3; Laws, 1986, ch. 361, § 3; Laws, 1988, ch. 474, § 3; Laws, 1992, ch. 496, § 26; Laws, 1996, ch. 511, § 3; Laws, 2001, ch. 495, § 24; Laws, 2017, ch. 329, § 6, eff from and after July 1, 2017.

Editor's Notes —

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Section 41-29-176, referred in this section, was repealed by Section 2 of Chapter 484, Laws of 2013, as amended by Section 5 of Chapter 501, Laws of 2014, and as amended by Section 23 of Chapter 452, Laws of 2015, effective July 1, 2018.

Amendment Notes —

The 2017 amendment inserted "and in Section 41-29-107.1" in (1); inserted "by the district attorney or his or her designee, or an attorney for the bureau, as applicable" in (2); substituted "Department of Revenue" for "State Tax Commission" both times it appears in (3); and inserted "and Section 41-29-107.1" in (11).

Cross References —

Disposition of seized controlled substances, see § 41-29-154.

Mississippi Motor Vehicle and Manufactured Housing Title Law, see §§ 63-21-1 et seq.

Federal Aspects—

Federal Aviation Programs, generally, see 49 USCS § 40101 et seq.

Federal Aviation Administration generally, see 49 USCS § 1341 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Innocent owner.
3. Constitutionality.

1. In general.

Pursuant to Miss. Code Ann. § 41-29-177(1), the county's forfeiture complaint against defendant was timely; however, there was no explanation by the county for the delay in the proceedings, and on remand, the county had the opportunity to explain the delay and defendant could explain why he did not request a hearing for three years. One 1970 Mercury Cougar v. Tunica County, 936 So. 2d 988, 2006 Miss. App. LEXIS 609 (Miss. Ct. App. 2006).

City seized cash and a vehicle; subsequently, the city released the vehicle, but not the cash, to the owner. The forfeiture proceedings in the case, because of the value of the property involved, which was $35,370 in cash, had to be instituted by the city pursuant to Miss. Code Ann. § 41-29-177, which required that forfeiture proceedings be instituted within 30 days, but the city never instituted such proceedings within 30 days; therefore, in accordance with the requirement of Miss. Code Ann. § 41-29-177(1), the seized property had to be returned to the owner. City of Hattiesburg v. Thirty-Five Thousand Three Hundred Seventy Dollars, 872 So. 2d 701, 2004 Miss. App. LEXIS 404 (Miss. Ct. App. 2004).

A petition for forfeiture was not filed promptly where it was not filed until three months after the seizure of a vehicle and there was nothing in the record to justify the delay. Galloway v. City of New Albany, 735 So. 2d 407, 1999 Miss. LEXIS 154 (Miss. 1999).

Two bank accounts were not subject to forfeiture, notwithstanding that the owner of the accounts pled guilty to conspiracy to distribute 500 grams or more of cocaine and the commission of a drug crime with a firearm, where the state's witness could not tie the monies in the bank accounts with any criminal conduct by the owner. One (1) 1979 Ford 15V v. State ex rel. Miss. Bureau of Narcotics, 721 So. 2d 631, 1998 Miss. LEXIS 401 (Miss. 1998).

When a forfeiture is adjudicated in conjunction with criminal proceedings, the contraband money should be deposited into the county's general fund pursuant to Art 14 § 261 of the Mississippi Constitution and is subject to the usual accounting and audit procedures of the county and/or State; in those instances where criminal proceedings are never brought, or in cases where the forfeiture proceedings are not adjudicated in conjunction with a criminal trial, the statutory provisions of §§ 41-29-176 through 41-29-181 will prevail. Bell v. State, 623 So. 2d 267, 1993 Miss. LEXIS 335 (Miss. 1993).

Eighteen month delay between seizure of money and filing of petition for forfeiture of money violates § 41-29-177, and requires dismissal of petition for forfeiture, where no explanation for delay is offered. Lewis v. State, 481 So. 2d 842, 1985 Miss. LEXIS 2330 (Miss. 1985).

2. Innocent owner.

The owner of a vehicle was an innocent owner where the evidence indicated that he did not know about or consent to a drug transaction and that he thought he was driving his wife, who was involved in the transaction, to pick up child support. Galloway v. City of New Albany, 735 So. 2d 407, 1999 Miss. LEXIS 154 (Miss. 1999).

3. Constitutionality.

Owner's right to a speedy trial was implicated by a nine-year delay in a civil forfeiture case because length of the delay was substantial, the owner actively pursued his right to contest the forfeiture proceeding as soon as his criminal proceedings ended, he asserted his right to a speedy trial, and he alleged that he was prejudiced by the delay. 1984 Chevy Camaro v. Lawrence County Sheriff's Dep't, 148 So. 3d 672, 2014 Miss. App. LEXIS 562 (Miss. Ct. App. 2014).

In an action seeking the recovery of damages for the allegedly unconstitutional forfeiture of his truck and to obtain a declaration that the forfeiture statute at issue was unconstitutional, the defendant state was not entitled to summary judgment since, although the statute required institution of forfeiture proceedings "promptly," it set forth no guidelines for when a hearing on the forfeiture must be held and this rendered the statute facially unconstitutional because it allowed the government to deprive a presumably innocent person of his property indefinitely without due process of law. Galloway v. City of New Albany, 92 F. Supp. 2d 592, 2000 U.S. Dist. LEXIS 4596 (N.D. Miss. 2000).

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 41-29-177(10) provides procedure for forfeiture of property where owner of property cannot be served with copy of petition and/or where there was no person in possession of property at time it was seized. 1993 Miss. Op. Att'y Gen. 909.

Miss. Code Section 41-29-177(2) provides that petition for forfeiture of seized property may be filed "in the name of the State of Mississippi, the county or the municipality"; because petition is to be brought in name of county and not in name of law enforcement agency, county, acting through board of supervisors, has authority to decide whether or not it will pay private attorney to maintain forfeiture proceeding on county's behalf. 1993 Miss. Op. Att'y Gen. 991.

Procedure for making forfeiture expenditures out of sheriff's budget is provided for in Miss. Code Section 41-29-177(2). 1993 Miss. Op. Att'y Gen. 991.

Based on Section 41-29-177, service of process providing notice should be served in the same manner as in civil cases. All diligent efforts should be made to provide actual notice when at all possible. Notice by publication should be used only in the event that the owner of the property to be seized is unknown and diligent efforts to ascertain the identity or whereabouts of such owner fail. 1996 Miss. Op. Att'y Gen. 269.

A city could institute a forfeiture action with regard to cash found on the person of a dead suspected local drug dealer where the deceased's mother was believed to have resided in California, there had been no contact with her since 1996, she was believed to have died, and it was unknown whether the deceased had any other relatives. 2000 Miss. Op. Att'y Gen. 638.

The manner in which deadly weapons should be disposed of depends on the manner in which they were seized; specifically, Section 41-29-177 provides for the manner in which a weapon that has been seized and forfeited under the Uniform Controlled Substances Law should be disposed of; for all other deadly weapons that are seized, Section 45-9-151 should be followed; Section 21-39-21 is a general statute with regard to lost, stolen, abandoned, or misplaced property, but Section 45-9-151 is specific to deadly weapons and therefore the more specific statute should be followed. 2000 Miss. Op. Att'y Gen. 221.

RESEARCH REFERENCES

ALR.

Forfeitability of property held in marital estate under Uniform Controlled Substances Act or similar statute. 84 A.L.R.4th 620.

Validity and construction of provisions of Uniform Controlled Substances Act providing for forfeiture hearing before law enforcement officer. 84 A.L.R.4th 637.

Real property as subject of forfeiture under Uniform Controlled Substances Act or similar statutes. 86 A.L.R.4th 995.

Validity and construction of state statutes criminalizing the act of permitting real property to be used in connection with illegal drug activities. 24 A.L.R.5th 428.

Propriety of civil or criminal forfeiture of computer hardware or software. 39 A.L.R.5th 87.

Seizure or forfeiture of real property used in illegal possession, manufacture, processing, purchase, or sale of controlled substances under § 511(a)(7) of Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 USCS § 881(a)(7) [redesignated as 21 USCS § 889]). 104 A.L.R. Fed. 288.

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 221 et seq.

CJS.

28 C.J.S., Drugs and Narcotics Supp §§ 233, 235 et seq.

Law Reviews.

Payne, An introduction to civil forfeiture in Mississippi: An effective law enforcement tool or cash register justice? 59 Miss. L. J. 453, Fall 1989.

Practice References.

Smith, Prosecution and Defense of Forfeiture Cases (Matthew Bender).

§ 41-29-179. Procedure for disposition of seized property; answer; hearing; burden of proving property subject to forfeiture; disposition after court's finding; summary forfeiture of controlled substances, raw material and paraphernalia.

(1) Except as otherwise provided in Section 41-29-176 and Section 41-29-107.1, an owner of property, other than a controlled substance, raw material or paraphernalia, that has been seized shall file an answer within thirty (30) days after the completion of service of process. If an answer is not filed, the court shall hear evidence that the property is subject to forfeiture and forfeit the property to the Mississippi Bureau of Narcotics or the local law enforcement agency. If an answer is filed, a time for hearing on forfeiture shall be set within thirty (30) days of filing the answer or at the succeeding term of court if court would not be in progress within thirty (30) days after filing the answer. Provided, however, that upon request by the Bureau of Narcotics, the local law

enforcement agency or the owner of the property, the court may postpone said forfeiture hearing to a date past the time any criminal action is pending against said owner.

(2) If the owner of the property has filed an answer denying that the property is subject to forfeiture, then the burden is on the petitioner to prove that the property is subject to forfeiture. However, if an answer has not been filed by the owner of the property, the petition for forfeiture may be introduced into evidence and is prima facie evidence that the property is subject to forfeiture. The standard of proof placed upon the petitioner in regard to property forfeited under the provisions of this article shall be by a preponderance of the evidence.

(3) At the hearing any claimant of any right, title or interest in the property may prove his lien, encumbrance, security interest, other interest in the nature of a security interest, mortgage or deed of trust to be bona fide and created without knowledge or consent that the property was to be used so as to cause the property to be subject to forfeiture.

(4) If it is found that the property is subject to forfeiture, then the judge shall forfeit the property to the Mississippi Bureau of Narcotics or the local law enforcement agency. However, if proof at the hearing discloses that the interest of any bona fide lienholder, secured party, other person holding an interest in the property in the nature of a security interest, or any holder of a bona fide encumbrance, mortgage or deed of trust is greater than or equal to the present value of the property, the court shall order the property released to him. If such interest is less than the present value of the property and if the proof shows that the property is subject to forfeiture, the court shall order the property forfeited to the Mississippi Bureau of Narcotics or the local law enforcement agency.

(5) Upon a petition filed in the name of the State of Mississippi, the county or the municipality with the clerk of the circuit court of the county in which the seizure of any controlled substance or raw material is made, the circuit court having jurisdiction may order the controlled substance or raw material summarily forfeited except when lawful possession and title can be ascertained. If a person is found to have had lawful possession and title prior to seizure, the court shall order the controlled substance or raw material returned to the owner, if the owner so desires. Upon a petition filed in the name of the State of Mississippi, the county or the municipality with the clerk of the circuit court of the county in which the seizure of any purported paraphernalia is made, the circuit court having jurisdiction may order such seized property summarily forfeited when the court has determined the seized property to be paraphernalia as defined in Section 41-29-105(v).

HISTORY:

Laws, 1979, ch. 473, § 2; Laws, 1982, ch. 323, § 6; Laws, 1985, ch. 388, § 4; Laws, 1986, ch. 361, § 4; Laws, 1988, ch. 474, § 4; Laws, 2017, ch. 329, § 8, eff from and after July 1, 2017.

Editor's Note —

Section 41-29-176, referred in this section, was repealed by Section 2 of Chapter 484, Laws of 2013, as amended by Section 5 of Chapter 501, Laws of 2014, and as amended by Section

23 of Chapter 452, Laws of 2015, effective July 1, 2018.

Amendment Notes —

The 2017 amendment inserted "and Section 41-29-107.1" in the first sentence of (1).

Cross References —

Disposition of seized controlled substances, see § 41-29-154.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Innocent owner defense.

1. In general.

It was error to grant a driver's motion to dismiss for failure to state a claim because the city's forfeiture petition satisfied the notice pleading requirements; the petition for forfeiture put the driver on reasonable notice of the city's claims, and it sufficiently demonstrated that a recognized cause of action existed upon which the city could prevail under some set of facts. City of Meridian v. $104,960.00 United States Currency, 231 So. 3d 972, 2017 Miss. LEXIS 404 (Miss. 2017).

Mississippi Bureau of Narcotics (MBN) presented sufficient evidence establishing that the substances discovered during a motorist's arrest were controlled substances; therefore, the trial court was not clearly erroneous when it found that MBN proved, by a preponderance of the evidence, that the currency was found in close proximity to controlled substances. Six Thousand Dollars ($6,000) v. State ex rel. Miss. Bureau of Narcotics, 179 So. 3d 7, 2014 Miss. App. LEXIS 542 (Miss. Ct. App. 2014), aff'd, 179 So. 3d 1, 2015 Miss. LEXIS 444 (Miss. 2015).

Owner failed to file a statutorily sufficient petition to recover seized property and contest forfeiture within 30 days after receipt of the notice of intention to forfeit, because the petition was only signed by the owner's attorney, and the appellate court overruled the owner's assertion that the amended answer after the 30 days passed cured the deficiency. 1999 Buick Century v. State, 966 So. 2d 841, 2007 Miss. App. LEXIS 663 (Miss. Ct. App. 2007).

Supreme Court of Mississippi adopts the United States Court of Appeals for the Seventh Circuit's sound reasoning and finding that dog alerts to currency are entitled to probative weight in forfeiture proceedings; the currency contamination theory is rejected. Evans v. City of Aberdeen, 926 So. 2d 181, 2006 Miss. LEXIS 120 (Miss. 2006).

City did not meet its burden of showing that a civil forfeiture of money was warranted; a dog sniff was not entitled to weight due to the fact that a bag used could have been contaminated, no inference of illegal narcotics trafficking arose due to the fact that money was found in connection with a brass container, a brillo pad, and burnt tin foil since there was conflicting evidence regarding the use of those items, and there were no drugs found in a residence. Evans v. City of Aberdeen, 926 So. 2d 181, 2006 Miss. LEXIS 120 (Miss. 2006).

Where a property owner files a verified answer denying that the property is subject to forfeiture, the burden is on the State to prove to the contrary; the State must demonstrate by a preponderance of the evidence that the owner had knowledge of or consented to the illegal use of his or her property for drug-related activities. Marsh v. Gruver, 642 So. 2d 381, 1994 Miss. LEXIS 422 (Miss. 1994).

The evidence was insufficient to demonstrate a vehicle owner's knowledge of or consent to her brother's use of her vehicle to transport a controlled substance, and therefore forfeiture of the vehicle after the brother's arrest for possession of cocaine was improper, even though the owner was aware that her brother had previously been arrested on drug possession charges and she frequently allowed him to use her vehicle, where she filed a verified answer denying that her vehicle was subject to forfeiture, and she had warned her brother against using her car for drug activities, since facts merely creating a suspicion that the owner of a vehicle had knowledge of the driver's illegal activity are inadequate to support a forfeiture. Marsh v. Gruver, 642 So. 2d 381, 1994 Miss. LEXIS 422 (Miss. 1994).

There was insufficient proof of the necessary nexus between $1,270 in cash found in a suspect's pocket and crack cocaine found in his car to warrant seizure of the money where the cocaine was in a match box on the passenger side of the console, there was no evidence of furtive gestures or any other suggestion that the suspect had handled the package, the suspect denied that the money was in close proximity to the cocaine, he offered a reason why he was carrying the money on his person, and there was no evidence that the suspect was a drug dealer; in the absence of direct proof of trafficking, where there is uncontradicted proof of an alternate source, the presumption in § 41-29-153(a)(7) that drugs and money found in close proximity are forfeitable has been rebutted and disappears. Neely v. State ex rel.

Tate County, 628 So. 2d 1376, 1993 Miss. LEXIS 562 (Miss. 1993).

The evidence was sufficient to support a finding that $16,700 cash found in the defendant's automobile had been used or was intended for use in violation of the Uniform Controlled Substances Law (§§ 41-29-101 et seq.), and was therefore subject to forfeiture, where the cash was in mostly 20 dollar and 50 dollar denominations, it was found in a "Crown Royal" velvet bag, plastic "Ziploc" bags, 2 spare tires, and 2 rolls of gray duct tape were also found in the defendant's automobile, and an employee of the Mississippi Bureau of Narcotics testified that it was common to see 20 dollar and 50 dollar denominations used in drug trafficking and that the other items found in the defendant's automobile were also commonly used in narcotics trafficking. Hickman v. State, 592 So. 2d 44, 1991 Miss. LEXIS 847 (Miss. 1991).

The burden of proof on the State, under § 41-29-179, is a preponderance of the evidence. Reed v. State, 460 So. 2d 115, 1984 Miss. LEXIS 2001 (Miss. 1984).

If the owner of an automobile used to facilitate the illegal transportation, sale, receipt, possession, or concealment of certain controlled substances files a verified answer in response to a petition for forfeiture pursuant to § 41-29-153, denying that his automobile is subject to forfeiture, § 41-29-179 places upon the state the burden of proving the propriety of the forfeiture by a preponderance of the evidence; moreover, facts merely creating a suspicion that the owner had knowledge of the driver's illegal activity are inadequate to support a forfeiture and, accordingly, the facts that the vehicle owner's husband occasionally used her automobile, that he had access to her keys, and that she knew of his eight-year-old drug-related conviction were insufficient to warrant forfeiture of her car. Ervin v. State, 434 So. 2d 1324, 1983 Miss. LEXIS 2614 (Miss. 1983).

2. Innocent owner defense.

Preponderance of the evidence did not support a finding that appellant claimant knew of or consented to her son's use of her vehicle for drug-related activities; after the claimant and her husband suspected that the son was stealing the husband's medications, they took numerous measures to stop him from doing so (including having the medicine held at the post office and carrying the medicine with them in a bag), and the son did not have a driver's license and was not allowed to drive the vehicle. 1994 Mercury Cougar v. Tishomingo County, 970 So. 2d 744, 2007 Miss. App. LEXIS 823 (Miss. Ct. App. 2007).

OPINIONS OF THE ATTORNEY GENERAL

A city could institute a forfeiture action with regard to cash found on the person of a dead suspected local drug dealer where the deceased's mother was believed to have resided in California; there had been no contact with her since 1996 and she was believed to have died, and it was unknown whether the deceased had any other relatives. 2000 Miss. Op. Att'y Gen. 638.

An answer or pleading filed under Section 41-29-179 should be signed by the attorney filing the pleading or, if no attorney, by the individual filing the pleading. In either case the pleading need not be verified. 2006 Miss. Op. Att'y Gen. 199.

RESEARCH REFERENCES

ALR.

Forfeitability of property held in marital estate under Uniform Controlled Substances Act or similar statute. 84 A.L.R.4th 620.

Validity and construction of provisions of Uniform Controlled Substances Act providing for forfeiture hearing before law enforcement officer. 84 A.L.R.4th 637.

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 221 et seq.

CJS.

28 C.J.S., Drugs and Narcotics Supp §§ 233, 235 et seq.

Law Reviews.

Payne, An introduction to civil forfeiture in Mississippi: An effective law enforcement tool or cash register justice? 59 Miss. L. J. 453, Fall 1989.

Practice References.

Smith, Prosecution and Defense of Forfeiture Cases (Matthew Bender).

§ 41-29-181. Procedure for disposition of seized property; order directing disposition by bureau of narcotics.

(1) Regarding all controlled substances, raw materials and paraphernalia which have been forfeited, the circuit court shall by its order direct the Bureau of Narcotics to:

(a) Retain the property for its official purposes;

(b) Deliver the property to a government agency or department for official purposes;

(c) Deliver the property to a person authorized by the court to receive it; or

(d) Destroy the property that is not otherwise disposed, pursuant to the provisions of Section 41-29-154.

(2) All other property, real or personal, which is forfeited under this article, except as otherwise provided in Section 41-29-185, and except as provided in subsections (3), (7) and (8) of this section, shall be liquidated and, after deduction of court costs and the expenses of liquidation, the proceeds shall be divided and deposited as follows:

(a) In the event only one (1) law enforcement agency participates in the underlying criminal case out of which the forfeiture arises, twenty percent (20%) of the proceeds shall be forwarded to the State Treasurer and deposited in the General Fund of the state and eighty percent (80%) of the proceeds shall be deposited and credited to the budget of the participating law enforcement agency.

(b) In the event more than one (1) law enforcement agency participates in the underlying criminal case out of which the forfeiture arises, eighty percent (80%) of the proceeds shall be deposited and credited to the budget of the law enforcement agency whose officers initiated the criminal case and twenty percent (20%) shall be divided equitably between or among the other participating law enforcement agencies, and shall be deposited and credited to the budgets of the participating law enforcement agencies. In the event that the other participating law enforcement agencies cannot agree on the division of their twenty percent (20%), a petition shall be filed by any one of them in the court in which the civil forfeiture case is brought and the court shall make an equitable division.

If the criminal case is initiated by an officer of the Bureau of Narcotics and more than one (1) law enforcement agency participates in the underlying criminal case out of which the forfeiture arises, the proceeds shall be divided equitably between or among the Bureau of Narcotics and other participating law enforcement agencies and shall be deposited and credited to the budgets of the participating law enforcement agencies. In the event that the Bureau of Narcotics and the other participating law enforcement agencies cannot agree on an equitable division of the proceeds, a petition shall be filed by any one of them in the court in which the civil forfeiture case is brought and the court shall make an equitable division.

(3) All money which is forfeited under this article, except as otherwise

provided by Section 41-29-185, shall be divided, deposited and credited in the same manner as set forth in subsection (2) of this section.

(4) All property forfeited, deposited and credited to the Mississippi Bureau of Narcotics under this article shall be forwarded to the State Treasurer and deposited in a special fund for use by the Mississippi Bureau of Narcotics upon appropriation by the Legislature.

(5) All real estate which is forfeited under the provisions of this article shall be sold to the highest and best bidder at a public auction for cash, such auction to be conducted by the chief law enforcement officer of the initiating law enforcement agency, or his designee, at such place, on such notice and in accordance with the same procedure, as far as practicable, as is required in the case of sales of land under execution at law. The proceeds of such sale shall first be applied to the cost and expense in administering and conducting such sale, then to the satisfaction of all mortgages, deeds of trust, liens and encumbrances of record on such property. The remaining proceeds shall be divided, forwarded and deposited in the same manner set out in subsection (2) of this section.

(6) All other property that has been forfeited shall, except as otherwise provided, be sold at a public auction for cash by the chief law enforcement officer of the initiating law enforcement agency, or his designee, to the highest and best bidder after advertising the sale for at least once each week for three (3) consecutive weeks, the last notice to appear not more than ten (10) days nor less than five (5) days prior to such sale, in a newspaper having a general circulation in the jurisdiction in which said law enforcement agency is located. Such notices shall contain a description of the property to be sold and a statement of the time and place of sale. It shall not be necessary to the validity of such sale either to have the property present at the place of sale or to have the name of the owner thereof stated in such notice. The proceeds of the sale shall be disposed of as follows:

(a) To any bona fide lienholder, secured party or other party holding an interest in the property in the nature of a security interest, to the extent of his interest; and

(b) The balance, if any, remaining after deduction of all storage, court costs and expenses of liquidation shall be divided, forwarded and deposited in the same manner set out in subsection (2) of this section.

(7)(a) Any county or municipal law enforcement agency may maintain, repair, use and operate for official purposes all property, other than real property, money or such property that is described in subsection (1) of this section, that has been forfeited to the agency if it is free from any interest of a bona fide lienholder, secured party or other party who holds an interest in the property in the nature of a security interest. Such county or municipal law enforcement agency may purchase the interest of a bona fide lienholder, secured party or other party who holds an interest so that the property can be released for its use. If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law, the law enforcement agency shall be deemed to be the purchaser, and the certificate of title shall be issued to it as required by subsection (9) of this section.

(b)(i) If a vehicle is forfeited to or transferred to a sheriff's department, then the sheriff may transfer the vehicle to the county for official or governmental use as the board of supervisors may direct.

(ii) If a vehicle is forfeited to or transferred to a police department, then the police chief may transfer the vehicle to the municipality for official or governmental use as the governing authority of the municipality may direct.

(c) If a motor vehicle forfeited to a county or municipal law enforcement agency becomes obsolete or is no longer needed for official or governmental purposes, it may be disposed of in accordance with Section 19-7-5 or in the manner provided by law for disposing of municipal property.

(8) The Mississippi Bureau of Narcotics may maintain, repair, use and operate for official purposes all property, other than real property, money or such property as is described in subsection (1) of this section, that has been forfeited to the bureau if it is free from any interest of a bona fide lienholder, secured party, or other party who holds an interest in the property in the nature of a security interest. In such case, the bureau may purchase the interest of a bona fide lienholder, secured party or other party who holds an interest so that such property can be released for use by the bureau.

The bureau may maintain, repair, use and operate such property with money appropriated to the bureau for current operations. If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law, the bureau is deemed to be the purchaser and the certificate of title shall be issued to it as required by subsection (9) of this section.

(9) The Department of Revenue shall issue a certificate of title to any person who purchases property under the provisions of this section when a certificate of title is required under the laws of this state.

HISTORY:

Laws, 1979, ch. 473, § 3; Laws, 1982, ch. 323, § 7; Laws, 1983, ch. 508; Laws, 1985, ch. 388, § 5; Laws, 1986, ch. 361, § 2; Laws, 1996, ch. 511, § 4; Laws, 2001, ch. 329, § 1; Laws, 2004, ch. 498, § 1; Laws, 2005, ch. 463, § 3; Laws, 2012, ch. 495, § 2, eff from and after July 1, 2012.

Cross References —

Bureau of narcotics, generally, see §§ 41-29-107 through 41-29-112.

Disposition of seized controlled substances, see § 41-29-154.

Mississippi Motor Vehicle and Manufactured Housing Title Law, see §§ 63-21-1 et seq.

Bidding for forfeited beverages and property under alcoholic beverages control law, see § 67-1-17.

JUDICIAL DECISIONS

1. In general.

It was error to grant a driver's motion to dismiss for failure to state a claim because the city's forfeiture petition satisfied the notice pleading requirements; the petition for forfeiture put the driver on reasonable notice of the city's claims, and it sufficiently demonstrated that a recognized cause of action existed upon which the city could prevail under some set of facts. City of Meridian v. $104,960.00 United States Currency, 231 So. 3d 972, 2017 Miss. LEXIS 404 (Miss. 2017).

Business argued that the trial court erred in finding a customary practice existed between it and the county, and that the business was not entitled to storage fees for the vehicle; the appellate court failed to see how the dealings between the business and the county amounted to a customary practice whereby the county was entitled to free storage in return for using the services of the business; accordingly, the trial court's determination was in error, and although the trial judge intended the business to benefit from whatever proceeds were received after the forfeiture proceedings, it was unclear what exactly the trial court intended the business to receive. James Wrecker Serv. v. Humphreys County, 906 So. 2d 771, 2004 Miss. App. LEXIS 1154 (Miss. Ct. App. 2004).

When a forfeiture is adjudicated in conjunction with criminal proceedings, the contraband money should be deposited into the county's general fund pursuant to Art 14 § 261 of the Mississippi Constitution and is subject to the usual accounting and audit procedures of the county and/or State; in those instances where criminal proceedings are never brought, or in cases where the forfeiture proceedings are not adjudicated in conjunction with a criminal trial, the statutory provisions of §§ 41-29-176 through 41-29-181 will prevail. Bell v. State, 623 So. 2d 267, 1993 Miss. LEXIS 335 (Miss. 1993).

OPINIONS OF THE ATTORNEY GENERAL

Office of district attorney may participate in drug forfeiture proceeds. 1992 Miss. Op. Att'y Gen. 254.

Municipality could use state forfeiture funds to purchase police cars for law enforcement purposes but when forfeiture funds are received, municipality must amend its budget. 1994 Miss. Op. Att'y Gen. 105.

The office of the district attorney may participate in drug forfeiture proceeds under Section 41-29-181. 1996 Miss. Op. Att'y Gen. 280.

A law enforcement agency should contact the Director of the Bureau of Narcotics for the use of forfeited controlled substances for training or demonstration purposes under §§ 41-29-154 and 41-29-181. 1999 Miss. Op. Att'y Gen. 169.

In the context of forfeitures under the statute, the "initiating agency" is the entity filing the petition for forfeiture; the parties to an interlocal agreement may provide in that agreement which entity will be responsible for such filings, but this duty may not be assigned to a drug task force directly. 2000 Miss. Op. Att'y Gen. 728.

Monies seized by an initiating agency cannot be equally divided to all participating agencies in the interlocal agreement. 2000 Miss. Op. Att'y Gen. 728.

There is no authority that would permit sale of guns and weapons by sealed bids received solely from licensed gun dealers. 2002 Miss. Op. Att'y Gen. 511.

Contributing forfeited funds to a drug task force is a valid law enforcement purpose, therefore, a district attorney may contribute funds that are received by his office as a result of drug forfeiture to a drug task force. 2002 Miss. Op. Att'y Gen. 699.

Proceeds of drug forfeitures may be used for the construction of a jail as well as a weight and exercise room for the use of the employees of the sheriff's department. 2004 Miss. Op. Att'y Gen. 539.

A municipality may use forfeited funds to purchase real property for use as a police firing range. 2004 Miss. Op. Att'y Gen. 562.

In the event the agencies in Section 41-29-181(2)(b) cannot agree on an equitable division of proceeds, a petition shall be filed by any one of the agencies in the court in which the civil forfeiture case is brought and the court shall make an equitable division. 2006 Miss. Op. Att'y Gen. 142.

Drug forfeiture funds properly forfeited may be donated by check to the appropriate entity for any law enforcement purpose, including but not limited to training expenses for city and county narcotics units and computer equipment for the Circuit Court. 2007 Miss. Op. Att'y Gen. 116, 2007 Miss. AG LEXIS 91.

RESEARCH REFERENCES

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 221 et seq.

CJS.

28 C.J.S., Drugs and Narcotics Supp §§ 233, 235 et seq.

Law Reviews.

Payne, An introduction to civil forfeiture in Mississippi: An effective law enforcement tool or cash register justice? 59 Miss. L. J. 453, Fall 1989.

Practice References.

Smith, Prosecution and Defense of Forfeiture Cases (Matthew Bender).

§ 41-29-183. Procedure for disposition of seized property; exclusiveness of remedy.

Except as otherwise provided in Section 41-29-107.1, the forfeiture procedure set forth in Sections 41-29-177 through 41-29-181 is the sole remedy of any claimant, and no court shall have jurisdiction to interfere therewith by replevin, injunction, supersedeas or in any other manner.

HISTORY:

Laws, 1979, ch. 473, § 4; Laws, 2017, ch. 329, § 7, eff from and after July 1, 2017.

Amendment Notes —

The 2017 amendment added the exception at the beginning.

Cross References —

Disposition of seized controlled substances, see § 41-29-154.

RESEARCH REFERENCES

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 221 et seq.

CJS.

28 C.J.S., Drugs and Narcotics Supp §§ 233, 235 et seq.

Law Reviews.

Payne, An introduction to civil forfeiture in Mississippi: An effective law enforcement tool or cash register justice? 59 Miss. L. J. 453, Fall 1989.

Practice References.

Smith, Prosecution and Defense of Forfeiture Cases (Matthew Bender).

§ 41-29-185. Disposition of forfeited property transferred pursuant to federal property sharing provisions.

One hundred percent (100%) of any seized and forfeited property to be transferred to any state or local law enforcement agency under the provisions of 21 USCS Section 881(e)(1), 19 USCS Section 1616(a)(2), or other federal property sharing provisions, shall be credited to the budget of the state or local agency that directly participated in the seizure or forfeiture, for the specific purpose of increasing law enforcement resources for that specific state or local agency. Such transferred property must be used to augment existing state and local law enforcement budgets and not to supplant them.

HISTORY:

Laws, 1986, ch. 361, § 1; Laws, 2012, ch. 495, § 3, eff from and after July 1, 2012.

Editor's Notes —

21 USCS Section 881(e)(1) referred to in this section was repealed by Act April 25, 2000, P.L. 106-185 § 2(c)(3) Stat. 210. The section had earlier been redesignated § 888 and was headnoted "Expedited procedures for seized conveyances." 19 USCS Section 1616(a)(2) was repealed by Act Oct. 27, 1986, P.L. 99-570, Title 1, Subtitle Q, § 1836(b), 100 Stat. 3207-54. It provided for the disposition of forfeited property.

Cross References —

Disposition of certain forfeited property other than as provided by this section, see § 41-29-181.

OPINIONS OF THE ATTORNEY GENERAL

Employment of counsel to represent the city police department in criminal forfeiture and other law enforcement matters is an appropriate expenditure of drug forfeiture funds. 1992 Miss. Op. Att'y Gen. 171.

Section 41-29-185, concerning disposition of seized and forfeited property pursuant to federal statutes, also applies to disposition of seized and forfeited property under state drug forfeiture statutes; funds properly forfeited pursuant to court order may be used for any law enforcement purpose, including salaries of law enforcement personnel. 1993 Miss. Op. Att'y Gen. 864.

Drug forfeiture funds properly forfeited may be donated by check to the appropriate entity for any law enforcement purpose, including but not limited to training expenses for city and county narcotics units and computer equipment for the Circuit Court. 2007 Miss. Op. Att'y Gen. 116, 2007 Miss. AG LEXIS 91.

RESEARCH REFERENCES

ALR.

Lawfulness of seizure of property used in violation of law as prerequisite to forfeiture action or proceeding. 8 A.L.R.3d 473.

Relief to owner of motor vehicle subject to state forfeiture for use in violation of narcotics laws. 50 A.L.R.3d 172.

Forfeiture of money to state or local authorities based on its association with or proximity to other contraband. 38 A.L.R.4th 496.

Necessity of conviction of offense associated with property seized in order to support forfeiture of property to state or local authorities. 38 A.L.R.4th 515.

Real property as subject of forfeiture under Uniform Controlled Substances Act or similar statutes. 86 A.L.R.4th 995.

Jurisdiction of United States District Court under 28 USCS § 1346(a) in civil action to order return of fines, forfeitures, and costs imposed after criminal conviction subsequently held to have been unconstitutional. 41 A.L.R. Fed. 350.

Seizure and forfeiture of firearms or ammunition under 18 USCS § 924(d). 57 A.L.R. Fed. 234.

Forfeiture of personal property used in illegal manufacture, processing, or sale of controlled substances under § 511 of Comprehensive Drug Abuse Prevention and Control Act 1970 (21 USCS § 881 [repealed]). 59 A.L.R. Fed. 765.

Delay between seizure of personal property by Federal Government and institution of proceedings for forfeiture thereof as violative of Fifth Amendment due process requirements. 69 A.L.R. Fed. 373.

Seizure and forfeiture, under 19 USCS § 1526(e), of imported merchandise bearing counterfeit trademark. 72 A.L.R. Fed. 858.

Seizure or forfeiture of real property used in illegal possession, manufacture, processing, purchase, or sale of controlled substances under § 511(a)(7) of Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 USCS § 881(a)(7) [repealed]). 104 A.L.R. Fed. 288.

Law Reviews.

Payne, An introduction to civil forfeiture in Mississippi: An effective law enforcement tool or cash register justice? 59 Miss. L. J. 453, Fall 1989.

Practice References.

Smith, Prosecution and Defense of Forfeiture Cases (Matthew Bender).

§ 41-29-187. Production of business records and documents; investigations of felony violations; copy costs; return of documents; liability for compliance; sealed applications; offense for disclosures; penalties.

(1) Attorneys for the Mississippi Bureau of Narcotics, by and through the Director of the Mississippi Bureau of Narcotics, are authorized to seek judicial subpoenas to require any person, firm or corporation in the State of Mississippi to produce for inspection and copying business records and other documents which are relevant to the investigation of any felony violation of the Uniform Controlled Substances Law of the State of Mississippi. The production of the designated documents shall be at the location of the named person's, firm's or corporation's principal place of business, residence or other place at which the person, firm or corporation agrees to produce the documents. The cost of reproducing the documents shall be borne by the bureau at prevailing rates. At

the conclusion of the investigation and any related judicial proceedings, the person, firm or corporation from whom the records or documents were subpoenaed shall, upon written request, be entitled to the return or destruction of all copies remaining in the possession of the bureau.

(2) The bureau is authorized to make an ex parte and in camera application to the county or circuit court of the county in which such person, firm or corporation resides or has his principal place of business, or if the person, firm or corporation is absent or a nonresident of the State of Mississippi, to the county or circuit court of Hinds County. On application of the county or circuit court, a subpoena duces tecum shall be issued only upon a showing of probable cause that the documents sought are relevant to the investigation of a felony violation of the Uniform Controlled Substances Law or may reasonably lead to the discovery of such relevant evidence. Nothing contained in this section shall affect the right of a person to assert a claim that the information sought is privileged by law. Such application to the court shall be in writing and accompanied by a sworn affidavit from an agent of the Bureau of Narcotics which sets forth facts which the court shall consider in determining that probable cause exists.

(3) Any person, firm or corporation complying in good faith with a judicial subpoena issued pursuant to this section shall not be liable to any other person, firm or corporation for damages caused in whole or in part by such compliance.

(4) Documents in the possession of the Mississippi Bureau of Narcotics gathered pursuant to the provisions of this section and subpoenas issued by the court shall be maintained in confidential files with access limited to prosecutorial and other law enforcement investigative personnel on a "need to know" basis and shall be exempt from the provisions of the Mississippi Public Records Act of 1983, except that upon the filing of an indictment or information, or upon the filing of an action for forfeiture or recovery of property, funds or fines, such documents shall be subject to such disclosure as may be required pursuant to the applicable statutes or court rules governing the trial of any such judicial proceeding.

(5) The circuit or county judge shall seal each application and affidavit filed and each subpoena issued after service of said subpoena. The application, affidavit and subpoena may not be disclosed except in the course of a judicial proceeding. Any unauthorized disclosure of a sealed subpoena, application or affidavit shall be punishable as contempt of court.

(6) No person, including the Director of the Mississippi Bureau of Narcotics, an agent or member of his staff, prosecuting attorney, law enforcement officer, witness, court reporter, attorney or other person, shall disclose to an unauthorized person documents gathered by the bureau pursuant to the provisions of this section, nor investigative demands and subpoenas issued and served, except that upon the filing of an indictment or information, or upon the filing of an action for forfeiture or recovery of property, funds or fines, or in other legal proceedings, the documents shall be subject to such disclosure as may be required pursuant to applicable statutes and court rules governing the

trial of any such judicial proceeding. In the event of an unauthorized disclosure of any such documents gathered by the Mississippi Bureau of Narcotics pursuant to the provisions of this section, the person making any such unauthorized disclosure shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or imprisonment of not more than six (6) months, or by both such fine and imprisonment.

(7) No person, agent or employee upon whom a subpoena is served pursuant to this section shall disclose the existence of said subpoena or the existence of the investigation to any person unless such disclosure is necessary for compliance with the subpoena. Any person who willfully violates this subsection shall be guilty of a misdemeanor and may be confined in the county jail, for a period not to exceed one (1) year, or fined not more than Ten Thousand Dollars ($10,000.00), or both.

HISTORY:

Laws, 1998, ch. 493, § 1, eff from and after July 1, 1998.

Cross References —

Mississippi Public Records Act of 1983, see §§ 25-61-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 41-29-189. Drug Evidence Disposition Fund created; purpose; sources of funds.

There is created in the State Treasury a special fund to be known as the Drug Evidence Disposition Fund. The purpose of the fund shall be to provide funding for costs associated with the acquisition, storage, destruction or other disposition of evidence related to offenses under the Uniform Controlled Substances Act. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Treasurer upon warrants issued by the Mississippi Bureau of Narcotics. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

(a) Monies appropriated by the Legislature;

(b) The interest accruing to the fund;

(c) Monies received under the provisions of Section 99-19-73;

(d) Monies received from the federal government;

(e) Donations; and

(f) Monies received from such other sources as may be provided by or allowable under law.

HISTORY:

Laws, 2010, ch. 495, § 4, eff from and after July 1, 2010.

§ 41-29-191. Collection of unused prescription pills and drugs brought to drug task force main office from residential sources.

On the first Monday of each month, each drug task force may collect prescription pills and drugs that are brought to the main office of the task force from residential sources, and shall transport the collected pills and drugs to the incinerator maintained by the Mississippi Bureau of Narcotics for disposal. For the purposes of this section, the term "drug task force" means a drug or narcotics task force or enforcement team created through an interlocal cooperation agreement under Section 17-13-1 et seq.

HISTORY:
Laws, 2012, ch. 469, § 1, eff from and after July 1, 2012.

ARTICLE 5.

OTHER NARCOTIC DRUG REGULATIONS.

Sec.
41-29-301. License required.
41-29-303. Requirements for license.
41-29-305. Who may prescribe, administer, dispense, mix or otherwise prepare narcotic drugs.
41-29-307. Transportation and storage of narcotic drugs.
41-29-309. Nuisances.
41-29-311. Suspension or revocation of license or registration.
41-29-313. Purchase, possession, transfer, manufacture or distribution of listed chemical or drug with intent to unlawfully manufacture controlled substance prohibited; possession of anhydtrous ammonia in unauthorized container constitutes prima facie evidence of intent to unlawfully manufacture controlled substance; purchase, possession, transfer or distribution of certain quantities of ephedrine and pseudoephedrine prohibited; rebuttable presumption of intent to manufacture for person in possession of certain quantities of ephedrine or pseudoephedrine; enhanced penalties for certain violations.
41-29-315. Repealed.
41-29-317. Creation of program to assist retailers in reporting suspicious activities related to methamphetamine problem.
41-29-319. Emergency Response and Overdose Prevention Act.
41-29-321. Opioid antagonist administration training for first responders.

§ 41-29-301. License required.

No person shall manufacture, compound, mix, cultivate, grow or by any other process produce or prepare narcotic drugs, and no person as a wholesaler shall supply the same, without having first obtained a license so to do from the state board of pharmacy. However, the provisions of this section shall not apply to the dispensing, administration, giving away, mixing or otherwise preparing any of such drugs by a registered physician, dentist or veterinarian in the course of his professional practice, where said drugs are dispensed, administered, given away, mixed or otherwise prepared for legitimate medical purposes.

HISTORY:
Codes, 1942, § 6847; Laws, 1936, ch. 289.

Cross References —
Drug Courts, see §§ 9-23-1 et seq.

Registration of manufacturers and distributors of controlled dangerous substances, see § 41-29-127.

Forfeitures for violations of this article, see § 41-29-153.

Exemptions from license requirements, see § 41-29-307.

Commitment of alcoholics and drug addicts for treatment, see §§ 41-31-1 et seq.

RESEARCH REFERENCES

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 19 et seq., 79 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Drugs, Narcotics, and Poisons, Form 21 (complaint, petition or declaration – to restrain interference with production and distribution of medicine).

9 Am. Jur. Pl & Pr Forms (Rev), Drugs, Narcotics, and Poisons, Forms 4-8 (proceedings for relief from licensing regulation).

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 23 et seq. (petition or application – for judicial review of licensing authority's grant of a license to another – by existing license holder).

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 26, 32 (for mandamus – to compel issuance of license, order – directing jury trial – on petition for review of administrative denial of license).

CJS.

28 C.J.S., Drugs and Narcotics § 65-68.

§ 41-29-303. Requirements for license.

No license shall be issued under Section 41-29-301 unless and until the applicant therefor has furnished proof satisfactory to the state board of pharmacy that the applicant is of good moral character or, if the applicant be an association or corporation, that the managing officers are of good moral character, and that the applicant is properly equipped as to land, buildings, and paraphernalia to carry on the business described in his application. No license shall be granted to any person who has within five (5) years been convicted of a wilful violation of any law of the United States, or of any state, relating to opium, coca leaves, or other narcotic drugs, or to any person who is a narcotic drug addict. The state board of pharmacy may suspend or revoke any license for cause.

HISTORY:

Codes, 1942, § 6848; Laws, 1936, ch. 289.

§ 41-29-305. Who may prescribe, administer, dispense, mix or otherwise prepare narcotic drugs.

A physician or a dentist, in good faith and in the course of his professional practice only, may prescribe, administer, dispense, mix or otherwise prepare narcotic drugs, or he may cause the same to be administered by a nurse or interne under his direction and supervision.

A veterinarian, in good faith and in the course of his professional practice only, and not for use by human beings, may prescribe, administer, dispense, mix or otherwise prepare narcotic drugs, and he may cause them to be administered by an assistant or orderly under his direction and supervision.

Any person who has obtained from a physician, dentist, or veterinarian any narcotic drug for administration to a patient during the absence of such physician, dentist, or veterinarian, shall return to such physician, dentist, or veterinarian any unused portion of such drug, when it is no longer required by the patient.

HISTORY:
Codes, 1942, § 6851; Laws, 1936, ch. 289.

Cross References —
Prescriptions under uniform controlled dangerous substances law, see § 41-29-137.
Dentists, see §§ 73-9-1 et seq.
Practice of medicine, see § 73-25-33.
Veterinarians, see §§ 73-39-1 et seq.
Dispensation of drugs to state executioner, see § 99-19-53.

RESEARCH REFERENCES

ALR.
Right of medical patient to obtain, or physician to prescribe, Laetrile for treatment of illness – state cases. 5 A.L.R.4th 219.
Medical malpractice: drug manufacturer's package insert recommendations as evidence of standard of care. 82 A.L.R.4th 166.
Malpractice in diagnosis or treatment of meningitis. 51 A.L.R.5th 301.

Am. Jur.
25 Am. Jur. 2d, Drugs and Controlled Substances § 16.
34 Am. Jur. Proof of Facts 2d 199, Druggist's Liability for Improperly Filling Prescription.
38 Am. Jur. Proof of Facts 2d 589, Physician's Liability for Causing Patient's Drug Addiction.

CJS.
28 C.J.S., Drugs and Narcotics Supp § 197.
72 C.J.S., Poisons §§ 8 et seq.

§ 41-29-307. Transportation and storage of narcotic drugs.

The provisions of Sections 41-29-301 through 41-29-311 restricting the possessing and having control of narcotic drugs shall not apply to common carriers or to warehousemen, while engaged in lawful transporting or storing such drugs, or to any employee of the same acting within the scope of his employment; or to public officers or employees in the performance of their official duties requiring possession or control of narcotic drugs; or to temporary incidental possession by employees or agents of persons lawfully entitled to possession, or by persons whose possession is for the purpose of aiding public officers in performing their official duties.

HISTORY:
Codes, 1942, § 6856; Laws, 1936, ch. 289.

RESEARCH REFERENCES

ALR.
Conviction of possession of illicit drugs found in automobile of which defendant was not sole occupant. 57 A.L.R.3d 1319.
What constitutes unlawful conduct subject to federal statutes prohibiting drug-related activities aboard United States vessels (21 USCS §§ 955 et seq). 73 A.L.R. Fed. 586.

CJS.
72 C.J.S., Poisons §§ 2-4.

§ 41-29-309. Nuisances.

Any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by narcotic drug addicts for the purpose of using narcotic drugs or which is used for the illegal keeping or selling of the same shall be deemed a public nuisance. No person shall keep or maintain such public nuisance.

HISTORY:
Codes, 1942, § 6857; Laws, 1936, ch. 289.

Cross References —
Nuisances, generally, see §§ 95-3-1 et seq.

§ 41-29-311. Suspension or revocation of license or registration.

On the conviction of any physician, dentist, veterinarian, manufacturer, wholesaler, or apothecary of a violation of any of the provisions of Sections 41-29-301 through 41-29-309, in any court of competent jurisdiction, the clerk of said court shall send a certified copy of the indictment, affidavit, information, and of the rules, verdict and sentence to the board or officer, by whom the convicted defendant has been licensed to practice his or her profession or to carry on his or her business. Such board or officer may in its or his discretion suspend or revoke the license or registration of the convicted defendant to practice his or her profession or to carry on his or her business. On the application of any such convicted defendant whose license or registration has been suspended or revoked, upon proper showing and for good cause, said board or officer may reinstate such license or registration.

Any court of competent jurisdiction in which such a defendant is convicted of a violation of any of the provisions of Sections 41-29-301 through 41-29-309 shall have the power in its discretion to suspend or revoke the license or registration of the convicted defendant and may thereafter, upon proper showing and for good cause reinstate such license or registration.

No board or officer shall reinstate any such license or registration where the same shall have been suspended or revoked by a court of competent jurisdiction; no court shall reinstate any license of such a convicted defendant which has been revoked by the board or officer by whom the convicted defendant was licensed to practice his or her profession or to carry on his or her business except upon a proceeding brought in a court of competent jurisdiction for the purpose of setting aside or restraining such suspension or revocation of license.

This section shall not apply wherever any board is already, under existing statutes, vested with authority to suspend or revoke license because of violation of any federal law regulating the use or disposition of narcotics.

HISTORY:
Codes, 1942, § 6859; Laws, 1936, ch. 289.

Cross References —

Revocation or suspension of registration under uniform controlled dangerous substances law, see § 41-29-129.

Penalties for violations of uniform controlled dangerous substances law, see §§ 41-29-139 through 41-29-151.

Revocation or suspension of dentist's license, generally, see § 73-9-61.

Suspension or revocation of physician's license, generally, see §§ 73-25-27, 73-25-29, 73-25-31.

RESEARCH REFERENCES

ALR.

Revocation or suspension of license or permit to practice pharmacy or operate drugstore because of improper sale or distribution of narcotic or stimulant drugs. 17 A.L.R.3d 1408.

Wrongful or excessive prescription of drugs as ground for revocation or suspension of physician's or dentist's license to practice. 22 A.L.R.4th 668.

Medical malpractice: drug manufacturer's package insert recommendations as evidence of standard of care. 82 A.L.R.4th 166.

Malpractice in diagnosis or treatment of meningitis. 51 A.L.R.5th 301.

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 88 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration – by license holder – against administrative agency – to enjoin further proceedings to suspend or revoke license – attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Form 47 (citation-by licensing authority – commanding licensee to appear at proceedings for revocation or suspension of license).

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 43-46, 48 (revocation or suspension of license).

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 61-63 (reinstatement of license).

§ 41-29-313. Purchase, possession, transfer, manufacture or distribution of listed chemical or drug with intent to unlawfully manufacture controlled substance prohibited; possession of anhydtrous ammonia in unauthorized container constitutes prima facie evidence of intent to unlawfully manufacture controlled substance; purchase, possession, transfer or distribution of certain quantities of ephedrine and pseudoephedrine prohibited; rebuttable presumption of intent to manufacture for person in possession of certain quantities of ephedrine or pseudoephedrine; enhanced penalties for certain violations.

(1)(a) Except as authorized in this section, it is unlawful for any person to knowingly or intentionally:

(i) Purchase, possess, transfer, manufacture, attempt to manufacture or distribute any two (2) or more of the listed precursor chemicals or drugs in any amount with the intent to unlawfully manufacture a controlled substance;

(ii) Purchase, possess, transfer, manufacture, attempt to manufacture or distribute any two (2) or more of the listed precursor chemicals or drugs in any amount, knowing, or under circumstances where one reasonably should know, that the listed precursor chemical or drug will be used to unlawfully manufacture a controlled substance;

(b) The term "precursor drug or chemical" means a drug or chemical that, in addition to legitimate uses, may be used in manufacturing a controlled substance in violation of this chapter. The term includes any salt, optical isomer or salt of an optical isomer, whenever the existence of a salt, optical isomer or salt of optical isomer is possible within the specific chemical designation. The chemicals or drugs listed in this section are included by whatever official, common, usual, chemical or trade name designated. A "precursor drug or chemical" includes, but is not limited to, the following:

(i) Ether;
(ii) Anhydrous ammonia;
(iii) Ammonium nitrate;
(iv) Pseudoephedrine;
(v) Ephedrine;

(vi) Denatured alcohol (Ethanol);
(vii) Lithium;
(viii) Freon;
(ix) Hydrochloric acid;
(x) Hydriodic acid;
(xi) Red phosphorous;
(xii) Iodine;
(xiii) Sodium metal;
(xiv) Sodium hydroxide;
(xv) Muriatic acid;
(xvi) Sulfuric acid;
(xvii) Hydrogen chloride gas;
(xviii) Potassium;
(xix) Methanol;
(xx) Isopropyl alcohol;
(xxi) Hydrogen peroxide;
(xxii) Hexanes;
(xxiii) Heptanes;
(xxiv) Acetone;
(xxv) Toluene;
(xxvi) Xylenes.

(c) Any person who violates this subsection (1), upon conviction, is guilty of a felony and may be imprisoned for a period not to exceed eight (8) years or shall be fined not less than Five Thousand Dollars ($5,000.00) nor more than Fifty Thousand Dollars ($50,000.00), or both.

(d) Any person who violates this subsection (1) while also in possession of two (2) grams or less of a controlled substance that can be manufactured by using the precursor drugs or chemicals, upon conviction, is guilty of a felony and may be imprisoned for a period not to exceed eight (8) years or a fine of not less than Fifty Thousand Dollars ($50,000.00), or both.

(e) Any person who violates this subsection (1) while also in possession of more than two (2) grams but less than ten (10) grams of a controlled substance that can be manufactured by using the precursor drugs or chemicals, upon conviction, is guilty of a felony and may be imprisoned for a period not to exceed ten (10) years or a fine of not less than Fifty Thousand Dollars ($50,000.00), or both.

(f) Any person who violates this subsection (1) while also in possession of more than ten (10) grams but less than thirty (30) grams of a controlled substance that can be manufactured by using the precursor drugs or chemicals, upon conviction, is guilty of a felony and may be imprisoned for a period no less than three (3) years nor more than twenty (20) years or a fine of not less than Two Hundred Fifty Thousand Dollars ($250,000.00), or both.

(g) Any person who violates this subsection (1) while also in possession of a quantity of more than thirty (30) grams of a controlled substance that can be manufactured by using the precursor drugs or chemicals, upon conviction, is guilty of a felony and may be imprisoned for a period no less than three (3) years nor more than twenty (20) years or a fine of not less than Two Hundred Fifty Thousand Dollars ($250,000.00), or both.

(2)(a) It is unlawful for any person to knowingly or intentionally steal or unlawfully take or carry away any amount of anhydrous ammonia or to break, cut, or in any manner damage the valve or locking mechanism on an anhydrous ammonia tank with the intent to steal or unlawfully take or carry away anhydrous ammonia.

(b)(i) It is unlawful for any person to purchase, possess, transfer or distribute any amount of anhydrous ammonia knowing, or under circumstances where one reasonably should know, that the anhydrous ammonia will be used to unlawfully manufacture a controlled substance.

(ii) The possession of any amount of anhydrous ammonia in a container unauthorized for containment of anhydrous ammonia pursuant to Section 75-57-9 shall be prima facie evidence of intent to use the anhydrous ammonia to unlawfully manufacture a controlled substance.

(c)(i) It is unlawful for any person to purchase, possess, transfer or distribute two hundred fifty (250) dosage units or fifteen (15) grams in weight (dosage unit and weight as defined in Section 41-29-139) of pseudoephedrine or ephedrine, knowing, or under circumstances where one reasonably should know, that the pseudoephedrine or ephedrine will be used to unlawfully manufacture a controlled substance.

(ii) Except as provided in this subparagraph, possession of one or more products containing more than twenty-four (24) grams of ephedrine or pseudoephedrine shall constitute a rebuttable presumption of intent to use the product as a precursor to methamphetamine or another controlled substance. The rebuttable presumption established by this subparagraph shall not apply to the following persons who are lawfully possessing the identified drug products in the course of legitimate business:

1. A retail distributor of the drug products described in this subparagraph possessing a valid business license or wholesaler;

2. A wholesale drug distributor, or its agents, licensed by the Mississippi State Board of Pharmacy;

3. A manufacturer of drug products described in this subparagraph, or its agents, licensed by the Mississippi State Board of Pharmacy;

4. A pharmacist licensed by the Mississippi State Board of Pharmacy; or

5. A licensed health care professional possessing the drug products described in this subparagraph (ii) in the course of carrying out his profession.

(d) Any person who violates this subsection (2), upon conviction, is guilty of a felony and may be imprisoned for a period not to exceed five (5) years and shall be fined not more than Five Thousand Dollars ($5,000.00), or both fine and imprisonment.

(3) Nothing in this section shall preclude any farmer from storing or using any of the listed precursor drugs or chemicals listed in this section in the normal pursuit of farming operations.

(4) Nothing in this section shall preclude any wholesaler, retailer or pharmacist from possessing or selling the listed precursor drugs or chemicals in the normal pursuit of business.

(5) Any person who violates the provisions of this section with children under the age of eighteen (18) years present may be subject to a term of imprisonment or a fine, or both, of twice that provided in this section.

(6) Any person who violates the provisions of this section when the offense occurs in any hotel or apartment building or complex may be subject to a term of imprisonment or a fine, or both, of twice that provided in this section. For the purposes of this subsection (6), the following terms shall have the meanings ascribed to them:

(a) "Hotel" means a hotel, inn, motel, tourist court, apartment house, rooming house or any other place where sleeping accommodations are furnished or offered for pay if four (4) or more rooms are available for transient guests.

(b) "Apartment building" means any building having four (4) or more dwelling units, including, without limitation, a condominium building.

(7) Any person who violates the provisions of this section who has in his possession any firearm, either at the time of the commission of the offense or at the time any arrest is made, may be subject to a term of imprisonment or a fine, or both, of twice that provided in this section.

(8) Any person who violates the provisions of this section upon any premises upon which any booby trap has been installed or rigged may be subject to a term of imprisonment or a fine, or both, of twice that provided in this section. For the purposes of this subsection, the term "booby trap" means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of a person making contact with the device. The term includes guns, ammunition or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, nails, spikes, electrical devices, lines or wires with hooks attached, and devices designed for the production of toxic fumes or gases.

HISTORY:

Laws, 1999, ch. 555, § 1; Laws, 2000, ch. 561, § 1; Laws, 2002, ch. 479, § 1; Laws, 2005, ch. 309, § 3; Laws, 2005, ch. 463, § 4; Laws, 2010, ch. 303, § 2; Laws, 2014, ch. 457, § 38, eff from and after July 1, 2014.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected two references in (4) and (5). The words "this act" were changed to "this section." The Joint Committee ratified the corrections at its April 26, 2001, meeting.

Section 3 of ch. 309 Laws of 2005, effective from and after July 1, 2005 (approved March 3, 2005), amended this section. Section 4 of ch. 463, Laws of 2005, effective July 1, 2005 (approved March 29, 2005), also amended this section. As set out above, this section reflects the language of Section 4 of ch. 468, Laws of 2005, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Notes —

Laws of 2010, ch. 303, § 5, provides:

"SECTION 5. This act does not apply to wholesale drug distributors licensed and regulated by the Mississippi Board of Pharmacy and registered with and regulated by the United States Drug Enforcement Administration and exempts them from storage, reporting, record keeping or physical security control requirements for controlled substances containing any material, compound, mixture or preparation which contains any quantity of ephedrine or pseudoephedrine."

Cross References —

Imposition and collection of separate laboratory analysis fee in addition to any other assessments and costs imposed by statute on every individual convicted of a felony in a case where Crime Laboratory provided forensic science or laboratory services in connection with the case, see § 45-1-29.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

1. Constitutionality.
2. Indictments.
3. Amendment of indictment.
4. Construction.
5. Relation to other statutes.
6. Double jeopardy considerations.
7. Evidence.
8. Search and seizure.
9. Unit of measurement.
10. Jury instructions.
11. Sentence.
12. Speedy trial.

1. Constitutionality.

Statute outlawing the possession of precursors was not unconstitutionally vague, because it prohibited the possession of common household chemicals which the statute itself acknowledged also had legitimate uses, in that the prohibition was neither vague, nor irrational, given the danger common household chemicals could pose once removed from their traditional place under the sink and employed in an attempt to manufacture methamphetamine. Ferrell v. State, 158 So. 3d 1204, 2015 Miss. App. LEXIS 65 (Miss. Ct. App. 2015).

2. Indictments.

Although defendant was indicted for possession of precursors with an enhancement under a subsection of Miss. Code Ann. § 41-29-313(5), the indictment, however, recited that defendant violated a different subsection of the same statute, which dealt with possession of precursors in hotels or apartment buildings. Nonetheless, the indictment was not defective because the incorrect citation alone did not render the indictment defective, but rather was mere surplusage and not prejudicial to defendant. Ferrell v. State, 158 So. 3d 1204, 2015 Miss. App. LEXIS 65 (Miss. Ct. App. 2015).

Count I of the indictment charged defendant with conspiring to possess precursor chemicals which were not named or otherwise identified, but it did not charge him with conspiring to possess those unidentified precursors with either the intent to manufacture a controlled substance or with knowledge, or under circumstances where he reasonably should have known, that the precursor chemicals would be used to unlawfully manufacture a controlled substance, and thus the wording used in Count I failed to place defendant on notice as to whether he was being charged with conspiring to commit the crime specified in either Tenn. Code Ann. § 41-29-313(1)(a)(i), (1)(a)(ii), or (2)(c)(i); therefore, Count I of the indictment was defective because it failed to allege a crime, and the appellate court had to reverse and render defendant's conviction in Count I. Berry v. State, 996 So. 2d 793, 2007 Miss. App. LEXIS 422 (Miss. Ct. App. 2007), rev'd, 996 So. 2d 782, 2008 Miss. LEXIS 604 (Miss. 2008).

The indictment was not fatally defective for failing to state the word "methamphetamine" in the body of the indictment because the indictment and the jury instructions properly tracked the language of Miss. Code Ann. § 41-29-313(1)(a)(i). The jury instructions given did not amend the indictment, which properly informed defendant of the charges against him and conformed to precedent in Mississippi that stated the indictment should track the statute in order to be valid. Reid v. State, 910 So. 2d 615, 2005 Miss. App. LEXIS 155 (Miss. Ct. App. 2005).

Pivotal issue on which defendants' argument was hinged, was whether the removal of iodine from the indictment constituted a change that was substantive in nature or merely a change in form. Despite failing to prove that defendants were found in possession of iodine, the State clearly proved that they possessed two or more precursor elements, specifically ephedrine, denatured alcohol, and ethyl ether, and therefore, the presence of iodine in the indictment was inconsequential, and contrary to their arguments, the amended indictment did nothing to alter any defense raised by defendants. Pittman v. State, 904 So. 2d 1185, 2004 Miss. App. LEXIS 1043 (Miss. Ct. App. 2004).

Miss. Code Ann. § 41-29-313 made possession of precursor chemicals unlawful, and Miss. Code Ann. § 97-1-7 (the attempt statute), and

Miss. Code Ann. § 41-29-313, when viewed together, gave the elements of the crime of attempted possession of precursor drugs or chemicals. Thus, where defendant was charged with attempted possession of precursor chemicals, his argument that the trial court had erred in allowing him to plead guilty to a nonexistent statute of attempted possession of precursor chemicals was rejected. Green v. State, 880 So. 2d 377, 2004 Miss. App. LEXIS 808 (Miss. Ct. App. 2004).

Petitioner was indicted on two methamphetamine precursor counts, and though both counts may have concerned the same ephedrine, one count was retired, and petitioner was not prosecuted, tried nor convicted on both counts; accordingly, petitioner's rights against double jeopardy were not violated. McDonald v. State, 847 So. 2d 281, 2003 Miss. App. LEXIS 490 (Miss. Ct. App. 2003).

3. Amendment of indictment.

Court doubted the authority of the trial court to alter the nature of the charges against defendant under Miss. Code Ann. § 41-29-313(1)(a)(ii), (3) by omitting the charge of possession of pseudoephedrine from the instructions defining the elements of the count under § 41-29-313(1)(a)(ii), and it appeared that such a modification could only be undertaken by action of the grand jury; thus, the court considered defendant's claims on appeal on the basis of the provisions in the indictment in its "unamended" form. Hunt v. State, 863 So. 2d 990, 2004 Miss. App. LEXIS 13 (Miss. Ct. App. 2004).

4. Construction.

From a plain reading of the statute, it is clear that, in Miss. Code Ann. § 41-29-313, the legislature criminalized the possession, purchase, transfer or distribution of 250 dosage units or 15 grams of weight of pseudoephedrine, and the State has prosecutorial discretion to choose between dosage unit or weight when the drug appears in dosage unit form. Miss. Code Ann. § 41-29-139 does not alter the plain meaning, but provides guidance as to how to proceed when the drug is not in dosage unit form. Finn v. State, 978 So. 2d 1270, 2008 Miss. LEXIS 179 (Miss. 2008).

Although appellant argued that Miss. Code Ann. § 41-29-313(2)(c)(i) did not criminalize possession of greater than 15 grams of pseudoephedrine if it was in dosage form, appellant's interpretation ignored the statute's plain meaning. Finn v. State, 978 So. 2d 1270, 2008 Miss. LEXIS 179 (Miss. 2008).

Court rejected defendant's claim that Miss. Code Ann. § 41-29-313 attempted to criminalize conduct that was not criminal; the statute provides some safeguards from overzealous prosecutions by limiting the offense to situations where two or more of the suspect items are possessed at the same time or, with regard to over-the-counter cold medicine, where the quantity would appear to be excessive for any legitimate anticipated use of such a product. Hunt v. State, 863 So. 2d 990, 2004 Miss. App. LEXIS 13 (Miss. Ct. App. 2004).

While it may be true that the language of Miss. Code Ann. § 41-29-313(1)(a)(i) regarding "any amount" of the prohibited substances was primarily intended to cover situations where lesser quantities of the suspect materials were discovered and, therefore, the showing of multiple items was required to strengthen the inference of wrongful intent, it is nevertheless true that "any amount" plainly means just that – any amount; therefore, the possession of 250 – or 250,000, for that matter – dosage units of pseudoephedrine simultaneously with the possession of any one of the other prohibited substances listed in the statute constitutes a consummated violation of § 41-29-313(1)(a)(i), and, if a defendant is charged, convicted, and sentenced for that violation, it would plainly constitute a double jeopardy violation to attempt to punish defendant a second time for the possession of the exact same supply of pills, simply on the basis that the quantity happened to exceed the permissible level under a separate criminal statute. Hunt v. State, 863 So. 2d 990, 2004 Miss. App. LEXIS 13 (Miss. Ct. App. 2004).

5. Relation to other statutes.

Guilty plea to possession of precursors used in the manufacture of a controlled substance in violation of Miss. Code Ann. § 41-29-313(1)(b) could not be expunged under Miss. Code Ann. § 41-29-150(d)(2), because that statute did not enumerate possession of pseudoephedrine and ephedrine as one of the offenses that allowed for the possibility of expungement. Fields v. State, 17 So. 3d 1159, 2009 Miss. App. LEXIS 627 (Miss. Ct. App. 2009).

6. Double jeopardy considerations.

Defendant was properly charged with, tried for, convicted of, and sentenced for two distinct crimes of possessing methamphetamine precursors and possessing pseudoephedrine in violation of Miss. Code Ann. § 41-29-313(1)(a), (2)(c), where the pseudoephedrine was not listed as one of the methamphetamine precursors. McClellan v. State, 34 So. 3d 548, 2010 Miss. LEXIS 163 (Miss. 2010).

Because the offenses of possession under Miss. Code Ann. § 41-29-313 and conspiracy were considered separate criminal violations separately punishable, no double jeopardy principle was violated. Hunt v. State, 863 So. 2d 990, 2004 Miss. App. LEXIS 13 (Miss. Ct. App. 2004).

There was sufficient evidence to support defendant's convictions of possession of a controlled substance and possession of precursor chemicals with intent to manufacture a controlled substance; the State proved that the property where the evidence was seized was rented in defendant's name and the account for utilities was also in defendant's name, and thus constructive possession was shown, and there was nothing to support defendant's theory that the items were placed on the property in defendant's absence. Pipkins v. State, 878 So. 2d 119, 2004 Miss. App. LEXIS 15 (Miss. Ct. App.), cert. denied, 878 So. 2d 67, 2004 Miss. LEXIS 946 (Miss. 2004).

Quantity of pseudoephedrine described in count one, a violation of Miss. Code Ann. § 41-29-313(1)(a)(ii), was the same quantity of the drug that was identified in count two, a violation of § 41-29-313(3); this exposed defendant to multiple punishments for the same conduct, and under double jeopardy considerations, the court reversed defendant's conviction under count two. Hunt v. State, 863 So. 2d 990, 2004 Miss. App. LEXIS 13 (Miss. Ct. App. 2004).

Because the offenses of possession under Miss. Code Ann. § 41-29-313 and conspiracy were considered separate criminal violations separately punishable, no double jeopardy principle was violated. Hunt v. State, 863 So. 2d 990, 2004 Miss. App. LEXIS 13 (Miss. Ct. App. 2004).

7. Evidence.

Evidence that the pseudoephedrine, ammonium nitrate, and methamphetamine were found in a shed behind the mobile home where defendant resided, and that she handed a box with the methamphetamine to codefendant was sufficient to support her convictions for possession of pseudoephedrine and ammonium nitrate with the intent to manufacture a controlled substance and possession of .1 gram or more but less than two grams of methamphetamine. Whitehead v. State, 187 So. 3d 1091, 2016 Miss. App. LEXIS 182 (Miss. Ct. App. 2016).

Evidence was sufficient to support defendant's convictions for possessing methamphetamine precursors and possessing pseudoephedrine in violation of Miss. Code Ann. § 41-29-313(1)(a), (2)(c), where defendant admitted that he was aware of the presence and character of the particular substances and was intentionally and consciously in possession of them. McClellan v. State, 34 So. 3d 548, 2010 Miss. LEXIS 163 (Miss. 2010).

Evidence was sufficient that defendant possessed pills containing pseudoephedrine knowing that it would be unlawfully used to manufacture a controlled substance because his passenger had an illegal amount of pseudoephedrine, and defendant admitted that he drove her to purchase pills to sell for use in the eventual manufacture of methamphetamine. Gales v. State, 29 So. 3d 65, 2009 Miss. App. LEXIS 629 (Miss. Ct. App. 2009).

Defendant's conviction for possession of precursor chemicals in violation of Miss. Code Ann. § 41-29-313(1)(a)(ii) was appropriate because the state presented the precursor chemicals recovered, and the officers testified that defendant was in the shop with the precursors. There was also a very strong chemical smell indicating that methamphetamine was being manufactured. Anderson v. State, 973 So. 2d 1044, 2008 Miss. App. LEXIS 70 (Miss. Ct. App. 2008).

Where an officer testified that he found 288 pseudoephedrine pills in a car, defendant admitted that he was planning to cook methamphetamine, he instructed a passenger in a car to go into a store and get "some," and he admitted that a trip was made to purchase pseudoephedrine, convictions under Miss. Code Ann. §§ 41-29-139, 41-29-313(2)(c) were adequately supported by the evidence. Vardaman v. State, 966 So. 2d 885, 2007 Miss. App. LEXIS 706 (Miss. Ct. App. 2007).

Defendant who was found guilty of attempted manufacture of methamphetamine under Miss. Code Ann. § 41-29-313(1)(c) did not show that counsel was deficient in failing to to make a hearsay objection under Miss. R. Evid. 801(c) to a narcotics officer's testimony that he had received complaints concerning defendant's possible manufacture of methamphetamine, or in failing to object to the agent's description of the predominant method of manufacturing methamphetamine in the area. Myhand v. State, 981 So. 2d 988, 2007 Miss. App. LEXIS 544 (Miss. Ct. App. 2007), cert. denied, 981 So. 2d 298, 2008 Miss. LEXIS 225 (Miss. 2008).

Evidence was sufficient to sustain a conviction under Miss. Code Ann. § 41-29-313 because an officer testified that the odor he encountered was indicative of a methamphetamine lab, he saw defendant exit the smoked filled room carrying a plastic container and glass jar connected by a tube, and substances contained within the items were later identified as ether, ephedrine, pseudoephedrine, and hexanes; additionally, the coffee filters found in the same room contained methamphetamine and ephedrine pseudoephedrine. Cook v. State, 953 So. 2d 271, 2007 Miss. App. LEXIS 143 (Miss. Ct. App. 2007).

Trial court did not err in denying defendant's motion to suppress as there was no indication of tampering, and the evidence was sufficient to establish defendant in constructive possession of drug precursors; due to direct evidence of the officers' testimony that precursors were found in defendant's toolbox, a circumstantial evidence instruction was properly denied and the jury's verdict was not against the overwhelming weight of the evidence. Terry v. State, 944 So. 2d 911, 2006 Miss. App. LEXIS 889 (Miss. Ct. App. 2006).

Conviction of possession of precursor chemicals with intent to manufacture a controlled substance, methamphetamine, was affirmed because defendant was stopped after he was observed purchasing two precursor chemicals at two different stores within a short span of time, the arresting officer explained that methamphetamine manufacturers often purchased different ingredients at different locations in order to avoid suspicion, and a search of defendant's vehicle uncovered two cans of starter fluid, four boxes of antihistabs, aquarium tubing, an aquarium pump, and two gas cans. Watts v. State, 936 So. 2d 377, 2006 Miss. App. LEXIS 111 (Miss. Ct. App.), cert. denied, 936 So. 2d 367, 2006 Miss. LEXIS 452 (Miss. 2006).

There was more than sufficient evidence from which jurors could reasonably conclude that defendant was in constructive possession of both the precursor chemicals and the methamphetamine at the lab; additional incriminating facts and circumstances supported defendant's awareness of the presence and character of the chemicals. Kerns v. State, 923 So. 2d 196, 2005 Miss. LEXIS 799 (Miss. 2005), cert. denied, 547 U.S. 1081, 126 S. Ct. 1797, 164 L. Ed. 2d 536, 2006 U.S. LEXIS 3096 (U.S. 2006).

Where defendant's fingerprints were found on material seized at a clandestine methamphetamine lab, the fingerprints discovered at the lab linked defendant to the contraband and that evidence was sufficient to uphold his conviction. Roebuck v. State, 2005 Miss. App. LEXIS 167 (Miss. Ct. App. Mar. 8, 2005), sub. op., op. withdrawn, 915 So. 2d 1132, 2005 Miss. App. LEXIS 1006 (Miss. Ct. App. 2005).

In a drug case, there was insufficient evidence to establish constructive possession of precursor chemicals under Miss. Code Ann. § 41-29-313(1)(a)(i) based on mere proximity to a methamphetamine laboratory located under a trailer; testimony of an alleged accomplice was insufficient to establish control over two precursor chemicals, as required. Kerns v. State, 923 So. 2d 210, 2005 Miss. App. LEXIS 243 (Miss. Ct. App.), aff'd in part and rev'd in part, 923 So. 2d 196, 2005 Miss. LEXIS 799 (Miss. 2005).

Verdict convicting defendant of possession of precursor chemicals with the intent to manufacture a controlled substance in violation of Miss. Code Ann. § 41-29-313(1)(a)(i) was not against the weight of the evidence because under § 41-29-313(1)(a)(i), the State was not required to prove that defendant possessed all four of the precursor chemicals but was only required to prove that defendant possessed any two of the precursor chemicals, hydrochloric acid, sulfuric acid, ether, and anhydrous ammonia. The State's expert testified regarding the testing and positive identification of the precursor chemicals found near defendant's rural home and the jury reasonably determined that the credibility of the State's expert was to be accorded substantial weight. Reid v. State, 910 So. 2d 615, 2005 Miss. App. LEXIS 155 (Miss. Ct. App. 2005).

In defendants' trial for possession of precursor chemicals with the intent to manufacture methamphetamines, the trial court's admission of numerous tupperware containers did not deprive defendants of any due process rights and, accordingly, did not prejudice their defense in any measure. That the containers were not found to have contained denatured alcohol and ethyl ether at the time of seizure was irrelevant because, as the trial court explained, the containers were not for proving the presence of the chemicals but, instead, "went to the intent issue." Pittman v. State, 904 So. 2d 1185, 2004 Miss. App. LEXIS 1043 (Miss. Ct. App. 2004).

Use of printed labels on pre-packaged, unopened, over-the-counter medications to prove defendant's possession of pseudoephedrine with knowledge that it would be used to manufacture a controlled substance in violation of Miss. Code Ann. § 41-29-313(2)(c), was proper because the ingredients listed were sufficiently trustworthy for admission into evidence as a hearsay exception within the purview of Miss. R. Evid. 803(17) and thus overcome defendant's hearsay and Sixth Amendment Confrontation Clause objections. Burchfield v. State, 892 So. 2d 191, 2004 Miss. LEXIS 1346 (Miss. 2004).

Evidence was sufficient to support defendant's conviction for possession of two or more precursor chemicals (pseudoephedrine and lithium), knowing that the precursor chemicals would be used to unlawfully manufacture a controlled substance (methamphetamine), pursuant to Miss. Code Ann. § 41-29-313(1)(a)(ii), where through the use of receipts, the State showed that defendant had bought several everyday household items that could be used for the manufacture of methamphetamine; he bought a few of these items at each of several different stores. At the time of the investigatory stop and search, he was in possession of boxes of ephedrine and several lithium batteries; the evidence showed he was in possession of precursors to the manufacture of methamphetamine, with the intent that the products would be used to manufacture methamphetamine. Walker v. State, 881 So. 2d 820, 2004 Miss. LEXIS 1011 (Miss. 2004).

There was sufficient evidence to support defendant's convictions of possession of a controlled substance and possession of precursor chemicals with intent to manufacture a controlled substance; the State proved that the property where the evidence was seized was rented in defendant's name and the account for utilities was also in defendant's name, and thus constructive possession was shown, and there was nothing to support defendant's theory that the items were placed on the property in defendant's absence. Pipkins v. State, 878 So. 2d 119, 2004 Miss. App. LEXIS 15 (Miss. Ct. App.), cert. denied, 878 So. 2d 67, 2004 Miss. LEXIS 946 (Miss. 2004).

There was sufficient evidence to support defendant's conviction under Miss. Code Ann. § 41-29-313 and for conspiracy given that defendant had purchased an unusually large number of pseudoephedrine packages, defendant attempted to conceal the packages from police, and defendant admitted that defendant was requested to purchase the packages by another individual in return for cash when defendant knew that the individual had been involved in the manufacturer of methamphetamine. Hunt v. State, 863 So. 2d 990, 2004 Miss. App. LEXIS 13 (Miss. Ct. App. 2004).

Sentence imposed on defendant for the convictions of possession of a controlled substance and possession of precursor chemicals with intent to manufacture a controlled substance was not unduly harsh, given that defendant, not the girlfriend, was the driving force behind the drug activity at the couple's place of residence. Pipkins v. State, 878 So. 2d 119, 2004 Miss. App. LEXIS 15 (Miss. Ct. App.), cert. denied, 878 So. 2d 67, 2004 Miss. LEXIS 946 (Miss. 2004).

Defendant did not agree to the admission of the packages of medication or waive his right to confront and cross-examine the person who labeled the medication as containing ephedrine, and the State failed to present any evidence that the medications had been chemically analyzed and determined to contain ephedrine, or pseudoephedrine; thus, the State failed to carry its burden of proof as to an essential element of possession of precursor drugs with knowledge that the drugs would be used to manufacture a controlled substance, and defendant's Sixth Amendment right to confrontation was violated and, therefore, the trial court reversed his conviction. Burchfield v. State, 2003 Miss. App. LEXIS 660 (Miss. Ct. App. July 22, 2003), op. withdrawn, sub. op., 892 So. 2d 248, 2004 Miss. App. LEXIS 538 (Miss. Ct. App. 2004).

8. Search and seizure.

Although defendant's motion to suppress items found in his house should have been granted because the issuing justice had not been presented with a basis of reliability for the informer's statement on which the officers relied, the Miss. Code Ann. § 41-29-313(1)(a)(i) conviction was not reversed because the evidence that ended in defendant's conviction did not come from defendant's house but from the search of other property on which a clandestine methamphetamine lab was found and the search of that property was not dependent on the search warrant issued for defendant's house. Roebuck v. State, 2005 Miss. App. LEXIS 167 (Miss. Ct. App. Mar. 8, 2005), sub. op., op. withdrawn, 915 So. 2d 1132, 2005 Miss. App. LEXIS 1006 (Miss. Ct. App. 2005).

Where defendant was charged with possession of "precursors" used in the illegal manufacture of controlled substances, having purchased or having attempted to purchase quantities of the subject common cold medication, the anonymous tip information given to the officer who conducted the investigatory stop included the color of the van, the number and race of occupants, the license plate number and the direction of travel, including the name of the street. All of those details were verified by officer prior to the investigatory questioning, and under the totality of the evidence standard, the investigatory stop based on the anonymous tip was lawful. Williamson v. State, 876 So. 2d 353, 2004 Miss. LEXIS 799 (Miss. 2004).

9. Unit of measurement.

Miss. Code Ann. § 41-29-313 does not provide any discretionary privileges to prosecutors concerning the unit of measurement that should be used in prosecuting drug cases where dosage units are the standard form of measurement, and the weight of the drug is considered a default measurement where the drug is not found in "dosage unit" form; therefore, a motion for post-conviction relief should have been granted because a sentence imposed was illegal where defendant had 180 tablets that weighed above the requisite number of grams. Finn v. State, 979 So. 2d 1, 2007 Miss. App. LEXIS 451 (Miss. Ct. App. 2007), rev'd, 978 So. 2d 1270, 2008 Miss. LEXIS 179 (Miss. 2008).

10. Jury instructions.

Defendant who was found guilty of attempted manufacture of methamphetamine under Miss. Code Ann. § 41-29-313(1)(c) did not show that counsel was deficient in failing to request a jury instruction on possession of precursor chemicals under Miss. Code Ann. § 41-29-139(b)(1) because the two offenses carried the same penalty. Myhand v. State, 981 So.

2d 988, 2007 Miss. App. LEXIS 544 (Miss. Ct. App. 2007), cert. denied, 981 So. 2d 298, 2008 Miss. LEXIS 225 (Miss. 2008).

11. Sentence.

Defendant's 60-year sentence after he was convicted for the possession of methamphetamine precursors was appropriate and not disproportionate under Miss. Code Ann. §§ 41-29-313(1)(c) or 41-29-147 because it was within the legislature's prerogative to determine that three drug offenses could result in a sentence of 60 years. The sentence was harsh, but not grossly disproportionate. Houser v. State, 29 So. 3d 813, 2009 Miss. App. LEXIS 562 (Miss. Ct. App. 2009), cert. denied, 29 So. 3d 774, 2010 Miss. LEXIS 135 (Miss. 2010).

Post-conviction relief was denied without an evidentiary hearing where defendant pled guilty to a drug charge because the trial court informed him of the consequences of the plea, despite an attorney's prediction that he would receive less time; moreover, a 34-year sentence was not disproportionate since it was within the limits of Miss. Code Ann. § 41-29-313 and Miss. Code Ann. § 41-29-147. Bridges v. State, 973 So. 2d 246, 2007 Miss. App. LEXIS 240 (Miss. Ct. App. 2007).

Where defendants were found guilty of possession of precursor chemicals with the intent to manufacture methamphetamines, their respective sentences of 25 years in the custody of the Mississippi Department of Corrections and a fine of $10,000, were well within the statutory limits of Miss. Code Ann. § 41-29-313(1)(b), and a perusal of Mississippi's case law clearly demonstrated that they were not subjected to sentences so excessive as to warrant the appellate court's review. Pittman v. State, 904 So. 2d 1185, 2004 Miss. App. LEXIS 1043 (Miss. Ct. App. 2004).

Sentence imposed on defendant for the convictions of possession of a controlled substance and possession of precursor chemicals with intent to manufacture a controlled substance was not unduly harsh, given that defendant, not the girlfriend, was the driving force behind the drug activity at the couple's place of residence. Pipkins v. State, 878 So. 2d 119, 2004 Miss. App. LEXIS 15 (Miss. Ct. App.), cert. denied, 878 So. 2d 67, 2004 Miss. LEXIS 946 (Miss. 2004).

On appeal, defendant alleged that the trial court's sentence for his first offense constituted cruel and unusual punishment in violation of the Eighth Amendment, but consideration of first time offender status was not the only consideration of the trial judge when sentencing defendant to the maximum sentence available and defendant's sentence was not grossly disproportionate to the crime of possession of precursor drugs with knowledge that the drugs would be used to manufacture a controlled substance of which he was convicted; thus, the trial judge did not abuse his discretion in sentencing defendant to the maximum penalty available within the statute, Miss. Code Ann. § 41-29-313. Burchfield v. State, 2003 Miss. App. LEXIS 660 (Miss. Ct. App. July 22, 2003), op. withdrawn, sub. op., 892 So. 2d 248, 2004 Miss. App. LEXIS 538 (Miss. Ct. App. 2004).

12. Speedy trial.

Defendant's conviction for the possession of methamphetamine precursors was appropriate because he was brought to trial within 275 days of his waiver of an arraignment and there was good cause shown for some of the continuances that were duly granted. There was also nothing indicating that the State exercised a deliberate attempt to sabotage the defense by delaying the trial. Houser v. State, 29 So. 3d 813, 2009 Miss. App. LEXIS 562 (Miss. Ct. App. 2009), cert. denied, 29 So. 3d 774, 2010 Miss. LEXIS 135 (Miss. 2010).

OPINIONS OF THE ATTORNEY GENERAL

A violation of Section 41-29-313 (2)(c)(i) may consist of possession of less than 250 dosage units but more than 15 grams, or less than 15 grams but more than 250 dosage units. Under either scenario the penalty under Section 41-29-313(2)(d) is the same. 2006 Miss. Op. Att'y Gen. 180.

§ 41-29-315. Repealed.

Repealed by Laws of 2010, ch. 303, § 4, effective from and after July 1, 2010.

§ 41-29-315. [Laws, 2005, ch. 309, § 1; Laws, 2009, ch. 540, § 1, eff from and after July 1, 2009].

Editor's Notes —

Former § 41-29-315 restricted the over-the-counter purchase and sale of ephedrine and pseudoephedrine.

§ 41-29-317. Creation of program to assist retailers in reporting suspicious activities related to methamphetamine problem.

(1) The Bureau of Narcotics may develop and maintain a program to inform retailers about the methamphetamine problem in the state and devise procedures and forms for retailers to use in reporting to the Bureau of Narcotics suspicious purchases, thefts or other transactions involving any products under the retailer's control which contain a regulated precursor under the provisions of Section 41-29-313.

(2) Reporting by retailers as required by this section shall be voluntary.

(3) Retailers reporting information to the Bureau of Narcotics in good faith pursuant to this section shall be immune from civil and criminal liability for a violation of Section 41-29-313.

HISTORY:

Laws, 2005, ch. 309, § 2; Laws, 2010, ch. 303, § 3, eff from and after July 1, 2010.

Editor's Notes —

Laws of 2010, ch. 303, § 5, provides:

"SECTION 5. This act does not apply to wholesale drug distributors licensed and regulated by the Mississippi Board of Pharmacy and registered with and regulated by the United States Drug Enforcement Administration and exempts them from storage, reporting, record keeping or physical security control requirements for controlled substances containing any material, compound, mixture or preparation which contains any quantity of ephedrine or pseudoephedrine."

§ 41-29-319. Emergency Response and Overdose Prevention Act.

(1) This section shall be known as the "Emergency Response and Overdose Prevention Act."

(2) As used in this section, the following terms shall be defined as provided in this subsection:

(a) "Practitioner" means a physician licensed to practice medicine in this state or any licensed health care provider who is authorized to prescribe an opioid antagonist.

(b) "Opioid antagonist" means any drug that binds to opioid receptors and blocks or inhibits the effects of opioids acting on those receptors and that is approved by the federal Food and Drug Administration for the treatment of an opioid-related overdose.

(c) "Opioid-related overdose" means an acute condition, including, but not limited to, extreme physical illness, decreased level of consciousness, respiratory depression, coma, mania or death, resulting from the consumption or use of an opioid or another substance with which an opioid was combined or that a layperson would reasonably believe to be resulting from the consumption or use of an opioid or another substance with which an opioid was combined for which medical assistance is required.

(d) "Emergency medical technician" means an individual who possesses a valid emergency medical technician's certificate issued under Section 41-59-33.

(3)(a) A practitioner acting in good faith and in compliance with the standard of care applicable to that practitioner may directly or by standing order prescribe an opioid antagonist to a person at risk of experiencing an opioid-related overdose or to a registered pain management clinic, family member, friend or other person in a position to assist such person at risk of experiencing an opioid-related overdose.

(b) A practitioner acting in good faith and in compliance with the standard of care applicable to that practitioner may issue a standing order to one or more individual pharmacies that authorizes the pharmacy to dispense an opioid antagonist to a person at risk of experiencing an opioid-related overdose or to a family member, friend or other person in a position to assist such person at risk of experiencing an opioid-related overdose, without the person to whom the opioid antagonist is dispensed needing to have an individual prescription.

(4) A pharmacist acting in good faith and in compliance with the standard of care applicable to pharmacists may dispense opioid antagonists under a prescription or a standing order issued in accordance with subsection (3) of this section. However, before a pharmacist may dispense an opioid antagonist under the authority of subsection (3)(b) of this section, the pharmacist must complete a training program approved by the State Board of Pharmacy on opioid antagonists.

(5) A person acting in good faith and with reasonable care to another person whom he or she believes to be experiencing an opioid-related overdose may administer an opioid antagonist that was prescribed or authorized by a standing order in accordance with subsection (3) of this section.

(6) Emergency medical technicians, firefighters and law enforcement officers acting in good faith shall be authorized and permitted to administer an opioid antagonist as clinically indicated. Failure of an emergency medical technician, firefighter or law enforcement officer to act shall not expose such person to any criminal or civil liability.

(7) The following individuals are immune from any civil or criminal liability or professional licensing sanctions for the following actions authorized by this section:

(a) Any practitioner who prescribes or issues a standing order for an opioid antagonist in accordance with subsection (3) of this section;

(b) Any practitioner or pharmacist acting in good faith and in compliance with the standard of care applicable to that practitioner or pharmacist who dispenses an opioid antagonist under a prescription or standing order issued in accordance with subsection (3) of this section;

(c) Any person other than a practitioner who administers an opioid antagonist in accordance with subsection (5) of this section; and

(d) Any emergency medical technician, firefighters and law enforcement officers who administers an opioid antagonist in accordance with subsection (6) of this section.

HISTORY:

Laws, 2015, ch. 337, § 1; Laws, 2017, ch. 346, § 1, eff from and after July 1, 2017.

Editor's Notes —

Section 3 of Chapter 337, Laws of 2015, made this section effective July 1, 2015, and applicable to all acts committed on or after that date.

Amendment Notes —

The 2017 amendment added (3)(b); in (4), inserted "or a standing order" in the first sentence and added the second sentence; inserted "or authorized by a standing order" in (5); in (6), inserted "firefighters and law enforcement officers" in the first sentence, and added the second sentence; and in (7), inserted "or issues a standing order for" in (a), inserted "or standing order" in (b), and inserted "firefighters and law enforcement officers" in (d).

§ 41-29-321. Opioid antagonist administration training for first responders.

The Mississippi State Department of Health shall create and offer training for first responders that meets the following criteria:

(a) The course content must include:

(i) The signs and symptoms of an opioid overdose;

(ii) The protocols and procedures for administration of an opioid antagonist;

(iii) The signs and symptoms of an adverse reaction to an opioid antagonist;

(iv) The protocols and procedures to stabilize the patient if an adverse response occurs;

(v) The procedures for storage, transport and security of the opioid antagonist.

(b) The method of opioid antagonist administration being taught.

(c) Training will be overseen by a physician or pharmacist licensed in this state.

(d) Subject to the oversight required in paragraph (c) of this section, training may be provided by the employer of the first responder.

(e) First responders trained to possess and administer opioid antagonists must be retrained at least every three (3) years.

HISTORY:

Laws, 2017, ch. 346, § 2, eff from and after July 1, 2017.

ARTICLE 7.

INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS.

Sec.
41-29-501. Definitions.
41-29-503. Admissibility of evidence obtained in violation of this article.
41-29-505. Judicial order authorizing interception of communications.
41-29-507. Bureau of Narcotics only agency authorized to possess, operate, etc. monitoring devices; exceptions.
41-29-509. Procedures for obtaining court order authorizing interception of communication.
41-29-511. Disclosure and use of information obtained from intercepted communication; privileged communications.

Sec.
41-29-513. Form and content of application for order authorizing interception of communication; ex parte hearing.
41-29-515. Granting of order; grounds; form; compensation of those furnishing assistance; time limit; authorization for covert entry; reports to judge; recusal of judge.
41-29-517. Recording of intercepted communications; sealing, custody, and destruction of recordings.
41-29-519. Sealing, custody, and destruction of applications and orders.
41-29-521. Penalty for violating Section 41-29-517 or 41-29-519.
41-29-523. Notice to persons named in order or application; inspection of intercepted communications; postponement of notice.
41-29-525. Parties to be furnished copy of court order and application prior to trial or proceeding; suppression of intercepted communications.
41-29-527. Reports to Administrative Office of United States Courts; report to legislature.
41-29-529. Civil action for violation of this article.
41-29-531. Exceptions to civil liability for violation of this article.
41-29-533. Penalties for violations of this article.
41-29-535. Applicability of article.
41-29-536. Motions for communication records to aid in investigations of violations of the Uniform Controlled Substances Law.
41-29-537. Repealed.

§ 41-29-501. Definitions.

As used in this article, the following terms shall have the meaning ascribed to them herein unless the context requires otherwise:

(a) "Aggrieved person" means a person who was a party to an intercepted wire, oral or other communication or a person against whom the interception was directed.

(b) "Communication common carrier" has the meaning given the term "common carrier" by 47 USCS 153(h) and shall also mean a provider of communication services.

(c) "Contents," when used with respect to a wire, oral or other communication, includes any information concerning the identity of the parties to the communication or the existence, substance, purport or meaning of that communication.

(d) "Covert entry" means any entry into or onto premises which if made without a court order allowing such an entry under this article would be a violation of criminal law.

(e) "Director" means the Director of the Bureau of Narcotics or, if the director is absent or unable to serve, the Assistant Director of the Bureau of Narcotics.

(f) "Electronic, mechanical or other device" means a device or apparatus primarily designed or used for the nonconsensual interception of wire, oral or other communications.

(g) "Intercept" means the aural or other acquisition of the contents of a wire, oral or other communication through the use of an electronic, mechanical or other device.

(h) "Investigative or law enforcement officer" means an officer of this state or of a political subdivision of this state who is empowered by law to conduct investigations of, or to make arrests for, offenses enumerated in Section 41-29-505, an attorney authorized by law to prosecute or participate in the prosecution of such offenses, or a federal law enforcement officer designated by the director.

(i) "Judge of competent jurisdiction" means a justice of the Supreme Court or a circuit court judge.

(j) "Oral communication" means an oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying that expectation.

(k) "Other communication" means any transfer of an electronic or other signal, including fax signals, computer generated signals, other similar signals, or any scrambled or encrypted signal transferred via wire, radio, electromagnetic, photoelectric or photooptical system from one party to another in which the involved parties may reasonably expect the communication to be private.

(*l*) "Prosecutor" means a district attorney with jurisdiction in the county in which the facility or place where the communication to be intercepted is located or a legal assistant to the district attorney if designated in writing by the district attorney on a case-by-case basis.

(m) "Residence" means a structure or the portion of a structure used as a person's home or fixed place of habitation to which the person indicates an intent to return after any temporary absence.

(n) "Wire communication" means a communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of reception furnished or operated by a person engaged as a common carrier in providing or operating the facilities for the transmission of communications and includes cordless telephones, voice pagers, cellular telephones, any mobile telephone, or any communication conducted through the facilities of a provider of communication services.

HISTORY:

Laws, 1989, ch. 553, § 1; repealed, Laws, 1989, ch. 553, § 19; reenacted, Laws, 1992, ch. 561, § 1; Laws, 1995, ch. 520, § 1; reenacted without change, Laws, 2004, ch. 511, § 1; Laws, 2005, ch. 463, § 6, eff from and after July 1, 2005.

Editor's Notes —

47 USCS 153(h) referred to in this section was amended several times since 1989; one significant amendment in 1996 redesignated the paragraphs and reordered them numerically rather than alphabetically; the same amendment also stated that "the terms used in this Act have the meanings provided in section 3 of the Communications Act of 1934" (47 USCS 153). The term "common carrier" is currently defined in 47 USCS 153(10).

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

Cross References —

Use of "pen register" to record outgoing numbers dialed or incoming communication, see § 41-29-701.

Federal Aspects—

Communication common carrier, defined, see 47 USCS § 153(h).

JUDICIAL DECISIONS

ANALYSIS

1. Oral communication.
2. Other communication.

1. Oral communication.

Under the terms of subsection (j), the circumstances of the drug buy at issue did not justify an expectation that the conversations between the defendant and the purchasers would not be intercepted where the defendant sold marijuana to unknown persons in a public parking lot. Ott v. State, 722 So. 2d 576, 1998 Miss. LEXIS 522 (Miss. 1998).

2. Other communication.

Under the terms of subsection (k), the circumstances of the drug buy at issue did not justify an expectation that the conversations between the defendant and the purchasers would be private where the defendant sold marijuana to unknown persons in a public parking lot. Ott v. State, 722 So. 2d 576, 1998 Miss. LEXIS 522 (Miss. 1998).

§ 41-29-503. Admissibility of evidence obtained in violation of this article.

The contents of an intercepted wire, oral or other communication and evidence derived from an intercepted wire, oral or other communication may not be received in evidence in any trial, hearing or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States or of this state or a political subdivision of this state if the disclosure of that information would be in violation of this article. The contents of an intercepted wire, oral or other communication and evidence derived from an intercepted communication may be received in a civil trial, hearing or other proceeding only if the civil trial, hearing or other proceeding arises out of a violation of the criminal law of this state.

HISTORY:

Laws, 1989, ch. 553, § 2; repealed, Laws, 1989, ch. 553, § 19; enacted, Laws, 1992, ch. 561, § 2; Laws, 1995, ch. 520, § 2; reenacted without change, Laws, 2004, ch. 511, § 2, eff from and after July 1, 2004.

Editor's Notes —

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

Cross References —

Use of "pen register" to record outgoing numbers dialed or incoming communication, see § 41-29-701.

JUDICIAL DECISIONS

1. Right to counsel.

Defendant was not deprived of effective assistance of counsel by counsel's failure to challenge the admission of an audio-tape of a drug transaction where the trial court had already ruled at a pretrial hearing that defendant had no reasonable expectation of privacy in the taped conversation and that therefore the recording was admissible at trial. Benson v. State, 821 So. 2d 823, 2002 Miss. LEXIS 211 (Miss. 2002).

RESEARCH REFERENCES

ALR.

Mode of establishing that information obtained by illegal wire tapping has or has not led to evidence introduced by prosecution. 28 A.L.R.2d 1055.

Admissibility, in criminal prosecution, of evidence secured by mechanical or electronic eavesdropping device. 97 A.L.R.2d 1283.

Eavesdropping as violating right of privacy. 11 A.L.R.3d 1296.

Violation of federal constitutional rule (Mapp v. Ohio) excluding evidence obtained through unreasonable search or seizure, as constituting reversible or harmless error. 30 A.L.R.3d 128.

"Fruit of the poisonous tree" doctrine excluding evidence derived from information gained in illegal search. 43 A.L.R.3d 385.

Admissibility, in criminal prosecution, of evidence obtained by electronic surveillance of prisoner. 57 A.L.R.3d 172.

Omission or inaudibility of portions of sound recording as affecting its admissibility in evidence. 57 A.L.R.3d 746.

Admissibility in evidence of sound recording as affected by hearsay and best evidence rules. 58 A.L.R.3d 598.

Validity, construction, and application of state criminal statute forbidding use of telephone to annoy or harass. 95 A.L.R.3d 411.

Permissible surveillance, under state communications interception statute, by person other than state or local law enforcement officer or one acting in concert with officer. 24 A.L.R.4th 1208.

Permissible warrantless surveillance, under state communications interception statute, by state or local law enforcement officer or one acting in concert with officer. 27 A.L.R.4th 449.

Admissibility of expert testimony as to modus operandi of crime – modern cases. 31 A.L.R.4th 798.

Eavesdropping on extension telephone as invasion of privacy. 49 A.L.R.4th 430.

Propriety of attorney's surreptitious sound recording of statements by others who are or may become involved in litigation. 32 A.L.R.5th 715.

Duty of prosecutor to present exculpatory evidence to state grand jury. 49 A.L.R.5th 639.

Propriety of search of nonoccupant visitor's belongings pursuant to warrant issued for another's premises. 51 A.L.R.5th 375.

Admissibility of evidence discovered in search of adult defendant's property or residence authorized by defendant's minor child – state cases. 51 A.L.R.5th 425.

What constitutes adequate response by government, pursuant to 18 USCS § 3504, affirming or denying use of unlawful electronic surveillance. 53 A.L.R. Fed. 378.

What constitutes compliance by government agents with requirement of 18 USCS § 2518(5) that wiretapping and electronic surveillance be conducted in such manner as to minimize unauthorized interception of communications. 54 A.L.R. Fed. 120.

Under what circumstances is suppression of wiretap evidence required when person overheard in wiretap but not mentioned in order therefor is not served with inventory notice provided for by 18 USCS § 2518(8)(d). 54 A.L.R. Fed. 599.

Applicability of provisions of Omnibus Crime Control and Safe Streets Act of 1968 prohibiting interception of wire or oral communications (18 USCS § 2511(1)) to interception by spouse, or spouse's agent, of conversation of other spouse in marital home. 55 A.L.R. Fed. 936.

Application to extension telephones of Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (18 USCS §§ 2510 et seq.), pertaining to interception of wire communications. 58 A.L.R. Fed. 594.

Right of immune jury witness to obtain access to government affidavits and other supporting materials in order to challenge legality of court-ordered wiretap or electronic surveillance which provided basis for questions asked in grand jury proceedings. 60 A.L.R. Fed. 706.

Propriety of monitoring of telephone calls to or from prison inmates under Title III of Omnibus Crime Control and Safe Streets Act (18 USCS §§ 2510 et seq.) prohibiting judicially unauthorized interception of wire or oral communications. 61 A.L.R. Fed. 825.

What claims are sufficient to require government, pursuant to 18 USCS § 3504, to affirm or deny use of unlawful electronic surveillance. 70 A.L.R. Fed. 67.

Applicability, in civil action, of provisions of Omnibus Crime Control and Safe Streets Act of 1986, prohibiting interception of communications (18 USCS § 2511(1)), to interceptions by spouse, or spouse's agent, of conversations of other spouse. 139 A.L.R. Fed. 517.

Am. Jur.

74 Am. Jur. 2d, Telecommunications § 218.

20 Am. Jur. Pl & Pr Forms (Rev), Privacy, Form 66 (complaint, petition, or declaration – by former employee – acts and conduct of employer in enforcement of random urinalysis drug testing procedures).

29 Am. Jur. Proof of Facts 591, Wiretapping, §§ 20, 21.

1 Am. Jur. Trials 481, Investigating the Criminal Case; General Principles.

15 Am. Jur. Trials 555, Police Misconduct Litigation – Plaintiff's Remedies.

8 Federal Procedure, L. Ed., Criminal Procedure §§ 22:171 et seq.

7 Federal Procedural Forms, L. Ed., Criminal Procedure, §§ 20:493, 20:584, 20:623, 20:1033.

Lawyers' Edition.

Admissibility of evidence obtained by wiretapping as affected by § 605 of the Federal Communications Act (47 USC § 605) – federal cases. 20 L. Ed. 2d 1718.

Propriety of federal injunction against use in state criminal trial of evidence unlawfully obtained. 27 L. Ed. 2d 984.

Obtaining evidence by use of sound recording or of mechanical or electronic eavesdropping device ("bugging") as violation of Fourth Amendment – federal cases. 59 L. Ed. 2d 959.

§ 41-29-505. Judicial order authorizing interception of communications.

A judge of competent jurisdiction in the circuit court district of the location where the interception of wire, oral or other communications is sought, or a circuit court district contiguous to such circuit court district, may issue an order authorizing interception of wire, oral or other communications only if the prosecutor applying for the order shows probable cause to believe that the interception will provide evidence of the commission of a felony under the Uniform Controlled Substances Law.

HISTORY:

Laws, 1989, ch. 553, § 3; repealed, Laws, 1989, ch. 553, § 19; enacted, Laws, 1992, ch. 561, § 3; Laws, 1995, ch. 520, § 3; reenacted without change, Laws, 2004, ch. 511, § 3, eff from and after July 1, 2004.

Editor's Notes —

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

Cross References —

Use of "pen register" to record outgoing numbers dialed or incoming communication, see § 41-29-701.

RESEARCH REFERENCES

ALR.

Authority of District Court to order telephone company to assist law enforcement agents in tracing telephone calls. 58 A.L.R. Fed. 719.

§ 41-29-507. Bureau of Narcotics only agency authorized to possess, operate, etc. monitoring devices; exceptions.

(1) No person, agency of the state or political subdivision of the state, other than the Bureau of Narcotics, is authorized by this article to own, possess, install, operate or monitor an electronic, mechanical or other device. The Bureau of Narcotics may be assisted by an investigative or law enforcement officer in the operation and monitoring of an interception of wire, oral or other communications, provided that an agent of the Bureau of Narcotics is present at all times.

(2) The director shall designate, in writing, the agents of the Bureau of Narcotics who are responsible for the possession, installation, operation and monitoring of electronic, mechanical or other devices for the bureau.

HISTORY:

Laws, 1989, ch. 553, § 4; repealed, Laws, 1989, ch. 553, § 19; enacted, Laws, 1992, ch. 561, § 4; Laws, 1995, ch. 520, § 4; Laws, 1999, ch. 403, § 1; reenacted without change, Laws, 2004, ch. 511, § 4, eff from and after July 1, 2004.

Editor's Notes —

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

Cross References —

Use of "pen register" to record outgoing numbers dialed or incoming communication, see § 41-29-701.

OPINIONS OF THE ATTORNEY GENERAL

A private individual not associated with any agency of the state or its political subdivisions may be charged and prosecuted under the statute. 1998 Miss. Op. Att'y Gen. 462.

§ 41-29-509. Procedures for obtaining court order authorizing interception of communication.

Prior to submitting a request for an order authorizing interception of wire, oral or other communications to a prosecutor, the director shall receive a written affidavit from one or more agents of the Bureau of Narcotics setting forth the information required by Section 41-29-513(1). The director shall submit all information required by Section 41-29-513(1) to the prosecutor. Upon receipt of the request from the director, the prosecutor shall be authorized to submit an application to a court of competent jurisdiction requesting the court to issue an order authorizing interception of wire, oral or other communications as provided in Section 41-29-515.

HISTORY:

Laws, 1989, ch. 553, § 5; repealed, Laws, 1989, ch. 553, § 19; enacted, Laws, 1992, ch. 561, § 5; Laws, 1995, ch. 520, § 5; reenacted without change, Laws, 2004, ch. 511, § 5, eff from and after July 1, 2004.

Editor's Notes —

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

Cross References —

Use of "pen register" to record outgoing numbers dialed or incoming communication, see § 41-29-701.

§ 41-29-511. Disclosure and use of information obtained from intercepted communication; privileged communications.

(1) An investigative or law enforcement officer who, by any means authorized by this article, obtains knowledge of the contents of a wire, oral or other communication or evidence derived from such communication may disclose the contents or evidence to another investigative or law enforcement officer to the extent that the disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(2) An investigative or law enforcement officer who, by any means authorized by this article, obtains knowledge of the contents of a wire, oral or other communication or evidence derived from such communication may use the contents or evidence to the extent the use is appropriate to the proper performance of his official duties.

(3) A person who receives, by any means authorized by this article, information concerning a wire, oral or other communication or evidence derived from a wire, oral or other communication intercepted in accordance with the provisions of this article may disclose the contents of such communication or the evidence derived from such wire, oral or other communication while giving testimony under oath in any proceeding held under the authority of the United States, of this state, or of a political subdivision of this state.

(4) An otherwise privileged wire, oral or other communication intercepted in accordance with, or in violation of, the provisions of this article does not lose

its privileged character, and any evidence derived from such privileged communication against the party to the privileged communication shall be considered privileged also.

(5) When an investigative or law enforcement officer, while engaged in intercepting wire, oral or other communications in a manner authorized by this article, intercepts wire, oral or other communications relating to offenses other than those specified in the order of authorization, the contents of and evidence derived from the communication may be disclosed or used as provided by subsections (1) and (2) of this section. Such contents and any evidence derived therefrom may be used under subsection (3) of this section when authorized by a judge of competent jurisdiction where the judge finds, upon subsequent application, that the contents were otherwise intercepted in accordance with the provisions of this article. The application shall be made as soon as practicable.

HISTORY:

Laws, 1989, ch. 553, § 6; repealed, Laws, 1989, ch. 553, § 19; enacted, Laws, 1992, ch. 561, § 6; Laws, 1995, ch. 520, § 6; reenacted without change, Laws, 2004, ch. 511, § 6, eff from and after July 1, 2004.

Editor's Notes —

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

Cross References —

Duplication of recordings for use or disclosure, and requirement of seal on recording as prerequisite to disclosure, see § 41-29-517.

Penalties for violation of the provisions of this section, see § 41-29-533.

Use of "pen register" to record outgoing numbers dialed or incoming communication, see § 41-29-701.

§ 41-29-513. Form and content of application for order authorizing interception of communication; ex parte hearing.

(1) To be valid, an application for an order authorizing the interception of a wire, oral or other communication must be made in writing under oath to a judge of competent jurisdiction in the circuit court district of the location where the interception of wire, oral or other communications is sought, or a circuit court district contiguous to such circuit court district, and must state the applicant's authority to make the application. An applicant must include the following information in the application:

(a) A statement that the application has been requested by the director and the identity of the prosecutor making the application;

(b) A full and complete statement of the facts and circumstances relied on by the applicant to justify his belief that an order should be issued including:

(i) Details about the particular offense that has been, is being, or is about to be committed;

(ii) A particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;

(iii) A particular description of the type of communication sought to be intercepted; and

(iv) The identity of the person, if known, committing the offense and whose communications are to be intercepted;

(c) A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed or to be too dangerous if tried;

(d) A statement of the period of time for which the interception is required to be maintained and, if the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication is first obtained, a particular description of the facts establishing probable cause to believe that additional communications of the same type will occur after the described type of communication is obtained;

(e) A statement whether a covert entry will be necessary to properly and safely install the wiretapping or electronic surveillance or eavesdropping equipment and, if a covert entry is requested, a statement as to why such an entry is necessary and proper under the facts of the particular investigation, including a full and complete statement as to whether other investigative techniques have been tried and have failed or why they reasonably appear to be unlikely to succeed or to be too dangerous if tried or are not feasible under the circumstances or exigencies of time;

(f) A full and complete statement of the facts concerning all applications known to the prosecutor making the application that have been previously made to a judge for authorization to intercept wire, oral or other communications involving any of the persons, facilities or places specified in the application and of the action taken by the judge on each application; and

(g) If the application is for the extension of an order, a statement setting forth the results already obtained from the interception or a reasonable explanation of the failure to obtain results.

(2) The judge may, in an ex parte in camera hearing, require additional testimony or documentary evidence in support of the application, and such testimony or documentary evidence shall be preserved as part of the application.

HISTORY:

Laws, 1989, ch. 553, § 7; repealed, Laws, 1989, ch. 553, § 19; enacted, Laws, 1992, ch. 561, § 7; Laws, 1995, ch. 520, § 7; reenacted without change, Laws, 2004, ch. 511, § 7, eff from and after July 1, 2004.

Editor's Notes —

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

Cross References —

Procedures for obtaining court order authorizing interception of communication, see § 41-29-509.

Time limit on order authorizing interception of communication, and extension thereof, see § 41-29-515.

Use of "pen register" to record outgoing numbers dialed or incoming communication, see § 41-29-701.

RESEARCH REFERENCES

ALR.

Who may apply or authorize application for order to intercept wire or oral communications under Title III of Omnibus Crime Control and Safe Streets Act of 1968 (18 USCS §§ 2510 et seq). 64 A.L.R. Fed. 115.

§ 41-29-515. Granting of order; grounds; form; compensation of those furnishing assistance; time limit; authorization for covert entry; reports to judge; recusal of judge.

(1) Upon receipt of an application, the judge may enter an ex parte order, as requested or as modified, authorizing interception of wire, oral or other communications if the judge determines from the evidence submitted by the applicant that:

(a) There is probable cause to believe that a person is committing, has committed, or is about to commit a particular offense enumerated in Section 41-29-505;

(b) There is probable cause to believe that particular communications concerning that offense will be obtained through the interception;

(c) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed or to be too dangerous if tried;

(d) There is probable cause to believe that the facilities from which or the place where the wire, oral or other communications are to be intercepted are being used or are about to be used in connection with the commission of an offense or are leased to, listed in the name of, or commonly used by the person; and

(e) A covert entry is or is not necessary to properly and safely install the electronic, mechanical or other device.

(2) Each order authorizing the interception of a wire or oral communication shall specify:

(a) The identity of the person, if known, whose communications are to be intercepted;

(b) The nature and location of the communications facilities as to which or the place where authority to intercept is granted;

(c) A particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates;

(d) A statement setting forth the identity of the prosecutor and stating that the director has requested the prosecutor to apply for the order authorizing the interception;

(e) The time during which the interception is authorized, including a statement of whether or not the interception will automatically terminate when the described communication is first obtained; and

(f) Whether or not a covert entry is necessary to properly and safely install wiretapping, electronic surveillance or eavesdropping equipment.

(3) The order authorizing the interception of a wire, oral or other communication shall, upon request of the applicant, direct that a communication common carrier, landlord, custodian or other person furnish the applicant all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that the carrier, landlord, custodian or other person is providing the person whose communications are to be intercepted. Any communication common carrier, landlord, custodian or other person furnishing facilities or

technical assistance is entitled to compensation by the applicant for the facilities or assistance at the prevailing rates.

(4) An order entered pursuant to this section may not authorize the interception of a wire, oral or other communication for longer than is necessary to achieve the objective of the authorization, and in no event may it authorize interception for more than thirty (30) days. The issuing judge may grant extensions of an order, but only upon application for an extension made in accordance with Section 41-29-513 and the court making the findings required by subsection (1) of this section. The period of extension may not be longer than the authorizing judge deems necessary to achieve the purposes for which it is granted, and in no event may the extension be for more than thirty (30) days. To be valid, each order and extension of an order shall provide that the authorization to intercept be executed as soon as practicable, be conducted in a way that minimizes the interception of communications not otherwise subject to interception under this article, and terminate on obtaining the authorized objective or within thirty (30) days, whichever occurs sooner.

(5) An order entered pursuant to this section may not authorize a covert entry into a residence solely for the purpose of intercepting a wire communication.

(6) An order entered pursuant to this section may not authorize a covert entry into or onto a premises for the purpose of intercepting an oral or other communication unless:

(a) The judge, in addition to making the determinations required under subsection (1) of this section, determines that:

(i)(A) The premises into or onto which the covert entry is authorized or the person whose communications are to be obtained has been the subject of a pen register previously authorized in connection with the same investigation; (B) the premises into or onto which the covert entry is authorized or the person whose communications are to be obtained has been the subject of an interception of wire communications previously authorized in connection with the same investigation; (C) that such procedures have failed; and (D) if the order is for the interception of other communications and requires covert entry, a court-ordered attempt to intercept the communications without using covert entry must have been made without success;

(ii) That the procedures enumerated in item (i) reasonably appear to be unlikely to succeed or to be too dangerous if tried or are not feasible under the circumstances or exigencies of time; and

(b) The order, in addition to the matters required to be specified under subsection (2) of this section, specifies that the covert entry is for the purpose of intercepting oral communications of two (2) or more persons and that there is probable cause to believe they are committing, have committed, or are about to commit a particular offense enumerated in Section 41-29-505.

(7) The judge of a court of competent jurisdiction may issue an order for the interception of wire, oral or other communications conducted within a vehicle, vessel, other mode of transportation or any location where a reason-

able expectation of privacy might exist, provided the requirements of this section, where applicable, are met.

(8) Whenever an order authorizing interception is entered pursuant to this article, the order may require reports to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Reports shall be made at any interval the judge requires.

(9) A judge who issues an order authorizing the interception of a wire, oral or other communication may not hear a criminal prosecution in which evidence derived from the interception may be used or in which the order may be an issue.

(10) An order issued pursuant to this section authorizing the interception of any cellular, portable, transportable or mobile telephone or communication instrument is valid throughout the State of Mississippi unless otherwise specified by the issuing judge.

HISTORY:

Laws, 1989, ch. 553, § 8; repealed, Laws, 1989, ch. 553, § 19; enacted, Laws, 1992, ch. 561, § 8; Laws, 1995, ch. 520, § 8; Laws, 1998, ch. 343, § 1; reenacted without change, Laws, 2004, ch. 511, § 8, eff from and after July 1, 2004.

Editor's Notes —

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

Cross References —

Procedures for obtaining court order authorizing interception of communication, see § 41-29-509.

Use of "pen register" to record outgoing numbers dialed or incoming communication, see § 41-29-701.

§ 41-29-517. Recording of intercepted communications; sealing, custody, and destruction of recordings.

(1) The contents of a wire, oral or other communication intercepted by means authorized by this article shall be recorded on tape, wire or other comparable device. The recording of the contents of a wire, oral or other communication under this subsection shall be done in a way that protects the recording from editing or other alterations.

(2) Immediately on the expiration of the period of the order and all extensions, if any, the recordings shall be made available to the judge issuing the order and sealed under his directions. Custody of the recordings shall be wherever the judge orders. The recordings may not be destroyed until at least ten (10) years after the date of expiration of the order and the last extension, if any. A recording may be destroyed only by order of the judge of competent jurisdiction who authorized the interception, or his successor.

(3) Duplicate recordings may be made for use or disclosure pursuant to subsections (1) and (2) of Section 41-29-511 for investigations.

(4) The presence of the seal required by subsection (2) of this section, or a satisfactory explanation of its absence, shall be a prerequisite for the use or disclosure of the contents of a wire, oral or other communication or evidence derived from the communication under subsection (3) of Section 49-29-511.

HISTORY:

Laws, 1989, ch. 553, § 9; repealed, Laws, 1989, ch. 553, § 19; enacted, Laws, 1992, ch. 561, § 9; Laws, 1995, ch. 520, § 9; reenacted without change, Laws, 2004, ch. 511, § 9, eff from and after July 1, 2004.

Editor's Notes —

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

Cross References —

Punishment of violation of this section as contempt, see § 41-29-521.

Use of "pen register" to record outgoing numbers dialed or incoming communication, see § 41-29-701.

§ 41-29-519. Sealing, custody, and destruction of applications and orders.

The judge shall seal each application made and order granted under this article. Custody of the applications and orders shall be wherever the judge directs. An application or order may be disclosed only upon a showing of good cause before a judge of competent jurisdiction, and may not be destroyed until at least ten (10) years after the date it is sealed. An application or order may be destroyed only by order of the judge of competent jurisdiction for the administrative judicial district in which it was made or granted.

HISTORY:

Laws, 1989, ch. 553, § 10; repealed, Laws, 1989, ch. 553, § 19; enacted, Laws, 1992, ch. 561, § 10; reenacted without change, Laws, 2004, ch. 511, § 10, eff from and after July 1, 2004.

Editor's Notes —

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

Cross References —

Punishment of violation of this section as contempt, see § 41-29-521.

Use of "pen register" to record outgoing numbers dialed or incoming communication, see § 41-29-701.

RESEARCH REFERENCES

ALR.

Delay in sealing or failure to seal tape or wire recording as required by 18 USCS § 2518(8)(a) as ground for suppression of such recording at trial. 62 A.L.R. Fed. 636.

§ 41-29-521. Penalty for violating Section 41-29-517 or 41-29-519.

A violation of Section 41-29-517 or 41-29-519 shall be punished as contempt of court.

HISTORY:

Laws, 1989, ch. 553, § 11; repealed, Laws, 1989, ch. 553, § 19; enacted, Laws, 1992, ch. 561, § 11; reenacted without change, Laws, 2004, ch. 511, § 11, eff from and after July 1, 2004.

Editor's Notes —

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

§ 41-29-523. Notice to persons named in order or application; inspection of intercepted communications; postponement of notice.

(1) Within a reasonable time but not later than ninety (90) days after the date an application for an order is denied or after the date an order or the last

extension, if any, expires, the judge who granted or denied the application shall cause to be served upon the persons named in the order or the application and any other parties to intercepted communications deemed appropriate by the issuing judge, if any, an inventory, which shall include notice:

(a) Of the entry of the order or the application;

(b) Of the date of the entry and the period of authorized interception or the date of denial of the application; and

(c) That during the authorized period wire, oral or other communications were or were not intercepted.

(2) The judge, upon motion, may, in his discretion, make available for inspection to any person or persons whose oral communications have been intercepted, or their counsel, any portion of an intercepted communication, application or order that the judge determines is in the interest of justice to disclose to that person.

(3) Upon an ex parte showing of good cause to the judge, the serving of the inventory required by this section may be postponed, but in no event may any evidence derived from an order under this article be disclosed in any trial until after such inventory has been served.

HISTORY:

Laws, 1989, ch. 553, § 12; repealed, Laws, 1989, ch. 553, § 19; enacted, Laws, 1992, ch. 561, § 12; Laws, 1995, ch. 520, § 10; Laws, 1998, ch. 343, § 2; reenacted without change, Laws, 2004, ch. 511, § 12, eff from and after July 1, 2004.

Editor's Notes —

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

Cross References —

Use of "pen register" to record outgoing numbers dialed or incoming communication, see § 41-29-701.

RESEARCH REFERENCES

ALR.

Right of accused in state courts to inspection or disclosure of evidence in possession of prosecution. 7 A.L.R.3d 8.

§ 41-29-525. Parties to be furnished copy of court order and application prior to trial or proceeding; suppression of intercepted communications.

(1) The contents of an intercepted wire, oral or other communication or evidence derived from the communication may not be received in evidence or otherwise disclosed in a trial, hearing or other proceeding in a federal or state court unless each party has been furnished with a copy of the court order and application under which the interception was authorized or approved not less than ten (10) days before the date of the trial, hearing or other proceeding. The ten-day period may be waived by the judge if he finds that it is not possible to furnish the party with the information ten (10) days before the trial, hearing or proceeding and that the party will not be prejudiced by the delay in receiving the information.

(2) An aggrieved person charged with an offense in a trial, hearing or proceeding in or before a court, department, officer, agency, regulatory body, or

other authority of the United States or of this state or a political subdivision of this state, may move to suppress the contents of a intercepted wire, oral or other communication or evidence derived from the communication on the ground that:

(a) The communication was unlawfully intercepted;

(b) The order authorizing the interception is insufficient on its face; or

(c) The interception was not made in conformity with the order.

(3) The motion to suppress shall be made before the trial, hearing or proceeding unless there was no opportunity to make the motion before the trial, hearing or proceeding, or the person was not aware of the grounds of the motion before the trial, hearing or proceeding. The hearing on the motion shall be held in camera upon the written request of the aggrieved person. If the motion is granted, the contents of the intercepted wire, oral or other communication and evidence derived from the communication shall be treated as inadmissible evidence. The judge, on the filing of the motion by the aggrieved person, shall make available to the aggrieved person or his counsel for inspection any portion of the intercepted communication or evidence derived from the communication that the judge determines is in the interest of justice to make available.

(4) Any circuit judge of this state, upon hearing a pretrial motion regarding conversations intercepted by wire pursuant to this article, or who otherwise becomes informed that there exists on such intercepted wire, oral or other communication identification of a specific individual who is not a party or suspect to the subject of interception:

(a) Shall give notice and an opportunity to be heard on the matter of suppression of references to that person if identification is sufficient so as to give notice; or

(b) Shall suppress references to that person if identification is sufficient to potentially cause embarrassment or harm which outweighs the probative value, if any, of the mention of such person, but insufficient to require the notice provided for in paragraph (a) of this subsection.

HISTORY:

Laws, 1989, ch. 553, § 13; repealed, Laws, 1989, ch. 553, § 19; enacted, Laws, 1992, ch. 561, § 13; Laws, 1995, ch. 520, § 11; reenacted without change, Laws, 2004, ch. 511, § 13, eff from and after July 1, 2004.

Editor's Notes —

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

Cross References —

Use of "pen register" to record outgoing numbers dialed or incoming communication, see § 41-29-701.

JUDICIAL DECISIONS

1. Right to counsel.

Defendant was not deprived of effective assistance of counsel by counsel's failure to challenge the admission of an audio-tape of a drug transaction where the trial court had already ruled at a pretrial hearing that defendant had no reasonable expectation of privacy in the taped conversation and that therefore the recording was admissible at trial. Benson v. State, 821 So. 2d 823, 2002 Miss. LEXIS 211 (Miss. 2002).

§ 41-29-527. Reports to Administrative Office of United States Courts; report to legislature.

(1) Within thirty (30) days after the date an order or the last extension, if any, expires or after the denial of an order, the issuing or denying judge shall report to the Administrative Office of the United States Courts:

(a) The fact that an order or extension was applied for;

(b) The kind of order or extension applied for;

(c) The fact that the order or extension was granted as applied for, was modified or was denied;

(d) The period of interceptions authorized by the order and the number and duration of any extensions of the order;

(e) The offense specified in the order or application or extension;

(f) The identity of the officer making the request and the prosecutor making the application; and

(g) The nature of the facilities from which or the place where communications were to be intercepted.

(2) In January of each year each prosecutor shall report to the Administrative Office of the United States Courts the following information for the preceding calendar year:

(a) The information required by subsection (1) of this section with respect to each application for an order or extension made;

(b) A general description of the interceptions made under each order or extension, including the approximate nature and frequency of incriminating communications intercepted, the approximate nature and frequency of order communications intercepted, the approximate number of persons whose communications were intercepted, and the approximate nature, amount and cost of the manpower and other resources used in the interceptions;

(c) The number of arrests resulting from interceptions made under each order or extension and the offenses for which arrests were made;

(d) The number of trials resulting from interceptions;

(e) The number of motions to suppress made with respect to interceptions and the number granted or denied;

(f) The number of convictions resulting from interceptions, the offenses for which the convictions were obtained, and a general assessment of the importance of the interceptions; and

(g) The information required by paragraphs (b) through (f) of this subsection with respect to orders or extensions obtained.

(3) Any judge or prosecutor required to file a report with the Administrative Office of the United States Courts shall forward a copy of such report to the director. On or before January 5 of each year the director shall submit to the Mississippi Administrative Office of Courts a report of all intercepts, as defined in this subsection and as required by federal law which relates to statistical

data only, conducted pursuant to this article and terminated during the preceding calendar year. Such report shall include:

(a) The report of judges and prosecuting attorneys forwarded to the director as required by this section;

(b) The number of Bureau of Narcotics personnel authorized to possess, install or operate electronic, mechanical or other devices;

(c) The number of Bureau of Narcotics and other law enforcement personnel who participated or engaged in the seizure of intercepts pursuant to this article during the preceding calendar year; and

(d) The total cost to the Bureau of Narcotics of all activities and procedures relating to the seizure of intercepts during the preceding calendar year, including costs of equipment, manpower and expenses incurred as compensation for use of facilities or technical assistance provided by the bureau.

HISTORY:

Laws, 1989, ch. 553, § 14; repealed, Laws, 1989, ch. 553, § 19; enacted, Laws, 1992, ch. 561, § 14; Laws, 1995, ch. 520, § 12; reenacted without change, Laws, 2004, ch. 511, § 14, eff from and after July 1, 2004.

Editor's Notes —

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

§ 41-29-529. Civil action for violation of this article.

(1) A person whose wire, oral or other communication is intercepted, disclosed or used in violation of this article shall have a civil cause of action against any person who intercepts, discloses or uses or procures another person to intercept, disclose or use the communication, and is entitled to recover from the person:

(a) Actual damages but not less than liquidated damages computed at a rate of One Hundred Dollars ($100.00) a day for each day of violation or One Thousand Dollars ($1,000.00), whichever is higher;

(b) Punitive damages; and

(c) A reasonable attorney's fee and other litigation costs reasonably incurred.

(2) A good faith reliance on a court order is a complete defense to any civil or criminal action brought under this article.

HISTORY:

Laws, 1989, ch. 553, § 15; repealed, Laws, 1989, ch. 553, § 19; enacted, Laws, 1992, ch. 561, § 15; Laws, 1995, ch. 520, § 13; reenacted without change, Laws, 2004, ch. 511, § 15, eff from and after July 1, 2004.

Editor's Notes —

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

Cross References —

Punitive damages, generally, see § 11-1-65.

Exceptions to civil liability imposed by this section for violation of article, see § 41-29-531.

Use of "pen register" to record outgoing numbers dialed or incoming communication, see § 41-29-701.

RESEARCH REFERENCES

ALR.

Construction and application of state statutes authorizing civil cause of action by person whose wire or oral communication is intercepted, disclosed, or used in violation of statutes. 33 A.L.R.4th 506.

Construction and application of provision of Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C.S. § 2520) authorizing civil cause of action by person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of Act. 164 A.L.R. Fed. 139.

§ 41-29-531. Exceptions to civil liability for violation of this article.

This article shall not apply to:

(a) An operator of a switchboard, or an officer, employee or agent of a communication common carrier whose facilities are used in the transmission of a wire communication, intercepts a communication, or who discloses or uses an intercepted communication in the normal course of employment while engaged in an activity that is a necessary incident to the rendition of service or to the protection of the rights or property of the carrier of the communication;

(b) An officer, employee or agent of a communication common carrier who employs or uses any equipment or device which may be attached to any telephonic equipment of any subscriber which permits the interception and recording of any telephonic communications solely for the purposes of business service improvements;

(c) An officer, employee or agent of a communication common carrier who provides information, facilities or technical assistance to an investigative or law enforcement officer who is authorized as provided by this article to intercept a wire, oral or other communication;

(d) A person acting under color of law who intercepts a wire, oral or other communication if the person is a party to the communication, or if one (1) of the parties to the communication has given prior consent to the interception; or

(e) A person not acting under color of law who intercepts a wire, oral or other communication if the person is a party to the communication, or if one (1) of the parties to the communication has given prior consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of this state, or for the purpose of committing any other injurious act.

HISTORY:

Laws, 1989, ch. 553, § 16; repealed, Laws, 1989, ch. 553, § 19; enacted, Laws, 1992, ch. 561, § 16; Laws, 1995, ch. 520, § 14; Laws, 1999, ch. 403, § 2; reenacted without change, Laws, 2004, ch. 511, § 16, eff from and after July 1, 2004.

Editor's Notes —

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

§ 41-29-533. Penalties for violations of this article.

(1) Any person who knowingly and intentionally possesses, installs, operates or monitors an electronic, mechanical or other device in violation of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to not more than one (1) year in the county jail or fined not more than Ten Thousand Dollars ($10,000.00), or both.

(2) Any person who violates the provisions of Section 41-29-511 shall be guilty of a felony and, upon conviction thereof, shall be sentenced to not more than five (5) years in the State Penitentiary and fined not more than Ten Thousand Dollars ($10,000.00).

HISTORY:

Laws, 1989, ch. 553, § 17; repealed, Laws, 1989, ch. 553, § 19; enacted, Laws, 1992, ch. 561, § 17; Laws, 1995, ch. 520, § 15; reenacted without change, Laws, 2004, ch. 511, § 17, eff from and after July 1, 2004.

Editor's Notes —

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

Cross References —

Imposition and collection of separate laboratory analysis fee in addition to any other assessments and costs imposed by statute on every individual convicted of a felony in a case where Crime Laboratory provided forensic science or laboratory services in connection with the case, see § 45-1-29.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or felony violation, see § 99-19-73.

RESEARCH REFERENCES

ALR.

Validity, construction, and effect of state legislation making wiretapping a criminal offense. 74 A.L.R.2d 855.

Misuse of telephone as minor criminal offense. 97 A.L.R.2d 503.

Interception of telecommunication by or with consent of party as exception, under 18 USCS § 2511(2)(c) and (d), to federal proscription of such interceptions. 67 A.L.R. Fed. 429.

§ 41-29-535. Applicability of article.

This article shall not apply to a person who is a subscriber to a telephone operated by a communication common carrier and who intercepts a communication on a telephone to which he subscribes. This article shall not apply to persons who are members of the household of the subscriber who intercept communications on a telephone in the home of the subscriber.

HISTORY:

Laws, 1989, ch. 553, § 18; repealed, Laws, 1989, ch. 553, § 19; enacted, Laws, 1992, ch. 561, § 18; reenacted without change, Laws, 2004, ch. 511, § 18, eff from and after July 1, 2004.

Editor's Notes —

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

JUDICIAL DECISIONS

1. In general.

State law prohibition on wiretapping did not apply to former wife who intercepted communications on her own telephone. Wright v. Stanley, 700 So. 2d 274, 1997 Miss. LEXIS 254 (Miss. 1997).

§ 41-29-536. Motions for communication records to aid in investigations of violations of the Uniform Controlled Substances Law.

(1) Attorneys for the Bureau of Narcotics may file a motion with a circuit court judge of the circuit court district in which the subscriber, instrument or other device exists, for communication records which will be material to an ongoing investigation of a felony violation of the Uniform Controlled Substances Law.

(2) The motion shall be made in writing, under oath, and shall include the name of the subscriber, the number or numbers, and the location of the instrument or other device, if known and applicable. The motion shall be accompanied by an affidavit from an agent of the Bureau of Narcotics which sets forth facts which the court shall consider in determining that probable cause exists to believe that the information sought will be material to an ongoing felony violation of the Uniform Controlled Substances Law.

(3) Upon consideration of the motion and the determination that probable cause exists, the circuit court judge may order a communications common carrier as defined by 47 USCS 153(h) or a provider of communication services to provide the Bureau of Narcotics with communication billing records, call records, subscriber information, or other communication record information. The communications common carrier or the provider of communication services shall be entitled to compensation at the prevailing rates from the Bureau of Narcotics.

(4) The circuit court judge shall seal each order issued pursuant to this section. The contents of a motion, affidavit and order may not be disclosed except in the course of a judicial proceeding. Any unauthorized disclosure of a sealed order, motion or affidavit shall be punishable as contempt of court.

HISTORY:

Laws, 1995, ch. 520, § 18; Laws, 1998, ch. 343, § 3; reenacted without change, Laws, 2004, ch. 511, § 19, eff from and after July 1, 2004.

Editor's Notes —

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

§ 41-29-537. Repealed.

Repealed by Laws, 2006, ch. 469, § 1 effective from and after July 1, 2006.

Laws, 1995, ch. 520, § 18; Laws, 1998, ch. 343, § 3; reenacted without change, Laws, 2004, ch. 511, § 19, eff from and after July 1, 2004.

Joint Legislative Committee Note —

Section 1 of ch. 379, Laws of 2006, effective from and after passage (approved March 13, 2006), repealed this section. Section 1 of ch. 469, Laws of 2006, effective from and after July 1, 2006 (approved March 23, 2006), also repealed this section. As set out above, this section reflects the repeal date as provided by Section 1 of ch. 469, Laws of 2006, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section effective on an earlier date.

Editor's Notes —

Former § 41-29-537 was entitled: "Repeal of Sections 41-29-501 through 41-29-536."

ARTICLE 9.

PEN REGISTER.

Sec.
41-29-701. Procedures for use of pen register.

§ 41-29-701. Procedures for use of pen register.

(1) As used in this section, the following words and phrases shall have the meanings ascribed to them herein unless the context clearly requires otherwise:

(a) "Pen register" means a mechanical or electronic device that attaches to a telephone line and is capable of recording outgoing numbers dialed from that line and date, time and duration of any incoming communication to that line.

(b) "Trap and trace device" means a device which captures the incoming electronic or other signals which identifies the originating number of an instrument or device from which a wire or other communication was transmitted.

(c) "Caller ID" means a service offered by a provider of communications services which identifies either or both of the originating number or the subscriber of such number of an instrument or device from which a wire or other communication was transmitted.

(2)(a) Attorneys for the Bureau of Narcotics, upon their own motion, may file an application with the circuit court for the installation and use of a pen register, trap and trace device or caller ID to obtain information material to an ongoing investigation of a felony violation of the Uniform Controlled Substances Law. Venue under this section shall be in the circuit court district of any of the following: (i) the county of residence of the subscriber, (ii) the county of residence of the user, (iii) the county in which the billing address is located, or (iv) the county in which the crime is allegedly being committed.

(b) The application shall be made in writing under oath and shall include the name of the subscriber, the telephone number or numbers, and the location of the telephone instrument or instruments upon which the pen register will be utilized. The application shall also set forth facts which the court shall consider in determining that probable cause exists that the installation and utilization of the pen register, trap and trace device or caller ID will be material to an ongoing investigation of a felony violation of the Uniform Controlled Substances Law.

(c) Upon consideration of the application and a determination that probable cause exists, the circuit court judge may order the installation and utilization of the pen register, trap and trace device or caller ID, and in the order the circuit court judge shall direct a communications common carrier, as defined by 47 USCS 153(h), to furnish all information, facilities and technical assistance necessary to facilitate the installation and utilization of the pen register, trap and trace device or caller ID unobtrusively and with a minimum of interference to the services provided by the carrier. The carrier is entitled to compensation at the prevailing rates for the facilities and assistance provided to the Bureau of Narcotics.

(d) An order for the installation and utilization of a pen register, trap and trace device or caller ID is valid for not more than thirty (30) days from the date the order is granted unless, prior to the expiration of the order, an attorney for the Bureau of Narcotics applies for and obtains from the court an extension of the order. The period of extension may not exceed thirty (30) days for each extension granted.

(e) The circuit court shall seal an application and order for the installation and utilization of a pen register, trap and trace device or caller ID granted under this section. The contents of an application or order may not be disclosed except in the course of a judicial proceeding and an unauthorized disclosure is punishable as contempt of court.

(3) On or before January 5 of each year, the Director of the Bureau of Narcotics shall submit a report to the Mississippi Administrative Office of Courts detailing the number of applications for pen registers sought and the number of orders for the installation and utilization of pen registers, trap and trace devices or caller ID granted during the preceding calendar year.

HISTORY:

Laws, 1989, ch. 554, § 1; Laws, 1995, ch. 520, § 17; Laws, 2007, ch. 328, § 1, eff from and after July 1, 2007.

Editor's Notes —

47 USCS 153(h) referred to in this section was amended several times since 1989; one significant amendment in 1996 redesignated the paragraphs and reordered them numerically rather than alphabetically; the same amendment also stated that "the terms used in this Act have the meanings provided in Section 3 of the Communications Act of 1934 (47 USCS 153). The term "common carrier" is currently defined in 47 USCS 153 (10).

Cross References —

Interception of wire or oral communication, see §§ 41-29-501 et seq.

CHAPTER 30.

ALCOHOLISM AND ALCOHOL ABUSE PREVENTION, CONTROL AND TREATMENT

Sec.

41-30-1. Title.
41-30-3. Definitions.
41-30-5. Division of alcohol and drug misuse; qualifications of director.
41-30-7. General duties of division.
41-30-9. Statewide plan; services and facilities to be included.
41-30-11. Statewide plan; use of local and private facilities; acceptance and expenditures of gifts, grants, etc.
41-30-13. Statewide plan; approval or certification of facilities.
41-30-15. Rules and regulations.
41-30-17. Inspections.
41-30-19. Treatment of public intoxicated offenders in lieu of execution of sentence.
41-30-21. Voluntary submission to treatment for alcoholism or drug dependency; application.
41-30-23. Voluntary submission to treatment; admission and duration of in-patient treatment.
41-30-25. After-care treatment and assistance.
41-30-27. Emergency involuntary commitment; alcoholics; drug addicts.
41-30-29. Supplemental nature of provisions for emergency involuntary commitment.
41-30-31. Involuntary commitment exceeding five days.
41-30-33. Confidentiality of records; conditions for disclosure.
41-30-35. Charge against person treated and his estate.
41-30-37. Right of private facility to payment for services.
41-30-39. Repealed.

§ 41-30-1. Title.

This chapter shall be cited as the "Comprehensive Alcoholism and Alcohol Abuse Prevention, Control and Treatment Act of 1974."

HISTORY:

Laws, 1974, ch. 562, § 1, eff from and after July 1, 1974.

Cross References —

Drug Courts, see §§ 9-23-1 et seq.

Involuntary commitment of alcoholics and drug addicts to private treatment facilities, see §§ 41-32-1 et seq.

Participation in a drug identification program, see §§ 47-5-601 et seq.

Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

OPINIONS OF THE ATTORNEY GENERAL

There is no indication that Sections 41-30-1 et seq. and Sections 41-21-61 et seq. are in anyway interchangeable and to admit or commit individual under mistaken statutory provision is denial of due process rights. 1994 Miss. Op. Att'y Gen. 999.

§ 41-30-3. Definitions.

For purposes of this chapter, the following words shall have the definition ascribed herein unless the context otherwise requires:

(a) "Board" shall mean the Mississippi State Board of Health, or in the event the 1974 Regular Session shall enact House Bill 411 and thereby, upon approval by the Governor, create a Board of Mental Health, the term "board" shall then mean such Board of Mental Health.

(b) "Division" shall mean the Bureau of Alcohol and Drug Services.

(c) "Director" shall mean the Director of the Bureau of Alcohol and Drug Services.

(d) "Consortium" shall mean the University Consortium on Alcohol Abuse and Alcoholism.

(e) "State hospitals" shall mean the Mississippi State Hospital at Whitfield and the East Mississippi State Hospital at Meridian.

(f) "Alcoholic" shall mean any person who chronically and habitually uses alcoholic beverages to the extent that he has lost the power of self-control with respect to the use of such beverages, or any person who, while chronically under the influence of alcoholic beverages, endangers public morals, health, safety or welfare.

(g) "Certified private treatment facility" shall mean any private facility, service or program approved by the division providing treatment or rehabilitation services for alcoholics and drug addicts, including, but not limited to, detoxication centers, licensed hospitals, community or regional mental health facilities, clinics or programs, halfway houses, and rehabilitation centers.

(h) "Certified public treatment facility" shall mean any center, facility, service or program approved by the division owned and operated or sponsored and operated by any federal, state or local governmental entity and which provides treatment and rehabilitation services for alcoholics or drug addicts.

(i) "Intoxicated person" shall mean a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or drugs.

(j) "Drug addict" and "drug addiction" shall have the meanings as defined in Section 41-31-1.

HISTORY:

Laws, 1974, ch. 562, § 2; Laws, 2016, ch. 449, § 2; Laws, 2017, ch. 404, § 2, eff from and after July 1, 2017.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subdivision (i) by substituting "operated by any federal, state or local governmental entity" for "operated by any federal, state of local governmental entity." The Joint Committee ratified the correction at its August 5, 2016, meeting.

Editor's Notes —

House Bill 411, referred to in this section, was enacted as Chapter 567, Laws of 1974, effective from and after April 23, 1974. See, in this regard, §§ 41-4-1 et seq.

Amendment Notes —

The 2017 amendment deleted (d), which read: " 'Advisory council' shall mean the Mississippi Advisory Committee on Alcohol Abuse and Alcoholism of the advisory council on comprehensive health planning of the Office of the Governor" and redesignated the remaining paragraphs accordingly.

Cross References —

Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

§ 41-30-5. Division of alcohol and drug misuse; qualifications of director.

There is hereby created a division of alcohol and drug misuse within the Mississippi State Board of Health or, if the 1974 Regular Session shall enact House Bill 411 and thereby, upon approval by the governor, create a board of mental health or department of mental health, then the division shall be created in such board or department of mental health which shall have as its chief administrative officer the director of the division of alcohol and drug misuse. The director shall be selected by the executive officer of the board and shall receive such compensation as established by the board. The director shall have an advanced academic degree along with experience and training in an area of study providing knowledge of medical-social problems including alcoholism or the organization or administration of treatment services for persons suffering from medical-social problems including alcoholism.

HISTORY:

Laws, 1974, ch. 562, § 3, eff from and after July 1, 1974.

Editor's Notes —

House Bill 411, referred to in this section, was enacted as Chapter 567, Laws of 1974, effective from and after April 23, 1974. See, in this regard, §§ 41-4-1 et seq.

Cross References —

Inclusion of the division of alcohol and drug misuse in the state department of mental health, see § 41-4-5.

Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

§ 41-30-7. General duties of division.

The division shall have the following duties:

(a) To formulate, develop and implement a statewide plan for the prevention and detection of alcohol abuse and alcoholism, and the care, treatment and rehabilitation of alcohol abusers and alcoholics. The division shall also implement the statewide plan through approved public and private treatment facilities including regional and community mental health facilities, local public and private hospitals, halfway houses, and other local entities or facilities presently providing such care, treatment and rehabilitation or which may be suitable for use in providing the same.

(b) To coordinate the efforts and enlist the assistance of all public and private agencies, organizations and individuals interested in the prevention of alcoholism and treatment and rehabilitation of alcoholics. The division shall also serve as a clearinghouse for information relating to alcoholism, and shall prepare, publish and disseminate information and educational material concerning the nature and effects of alcohol and the scope of the alcoholism problem in Mississippi.

(c) To foster and encourage regional, local and community plans and programs in the detection and prevention of alcohol abuse and alcoholism and in the treatment and rehabilitation of alcoholics. Such programs may be implemented through approved public and private treatment facilities including regional, local or community facilities, and shall be part of or coordinated with the statewide plan.

(d) To cooperate with the governing authority and directors of state hospitals in formulating and implementing the statewide plan so as to utilize facilities at state hospitals only when absolutely necessary.

(e) To cooperate with the state penitentiary board, the federal government, the probation and parole board, and other agencies having law enforcement and corrections responsibilities in establishing and conducting treatment and rehabilitation programs for alcoholics or intoxicated persons who, after conviction, are incarcerated in or on parole from correctional institutions.

(f) To cooperate with all law enforcement authorities, the office of the governor, and conservators of the peace in conducting education, treatment and rehabilitation programs for individuals arrested for alcohol-related offenses involving motor vehicles.

(g) To cooperate with the division of instruction of the state department of education, the University Consortium on Alcohol Abuse and Alcoholism, schools, law enforcement agencies, courts, and other public and private agencies, organizations and individuals in providing educational programs regarding alcohol and alcoholism, and in providing educational materials therefor.

(h) To cooperate with the University Consortium on Alcohol Abuse and Alcoholism in conducting research into the nature and effects of alcohol, the nature and scope of the alcohol abuse problem in Mississippi, the causes of alcoholism, and such other areas as the division deems proper.

(i) To cooperate with the University Consortium on Alcohol Abuse and Alcoholism in providing training for all individuals engaged in the identification, treatment and rehabilitation of alcoholics, including the alcohol and drug education specialists of the public schools of this state.

(j) To establish methods for the retention of statistical information by public and private agencies, organizations and individuals regarding medical, psychological and vocational treatment and rehabilitation for alcoholics, alcohol-related criminal violations, the effects of alcohol abuse upon the labor force and economy of this state, and such other areas as the division deems proper.

(k) To assist in the preparation of alcohol-related health, welfare and treatment plans and applications for grants to be submitted by a state or local agency to the federal government pursuant to the requirements of federal law.

(*l*) To encourage all public and private health, hospitalization, sickness and disability insurance programs to include coverage for alcoholism.

(m) To encourage and assist businesses and industries in formulating and implementing alcohol abuse identification and rehabilitation programs.

(n) To serve as the single state agency and alcoholism authority of the State of Mississippi pursuant to the provisions of the Community Mental Health Centers Amendments of 1968 (PL 90-574) and 1970 (PL 91-211) and the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616).

HISTORY:
Laws, 1974, ch. 562, § 4, eff from and after July 1, 1974.

Cross References —
Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

Federal Aspects—
Provisions of the Community Mental Health Centers, as amended by P.L. 90-574 and P.L. 91-211, and appearing generally as 42 USCS §§ 2661 et seq., have been omitted, repealed or transferred.

The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 appears generally as 42 USCS §§ 4541 et seq.

§ 41-30-9. Statewide plan; services and facilities to be included.

(1) The division shall establish a comprehensive statewide plan for the identification of alcohol abuse and treatment and rehabilitation of alcoholics and intoxicated persons. The statewide plan shall include a variety of treatment methods, and shall provide or arrange for a variety of approved treatment facilities so that the needs of persons suffering from alcoholism, and of persons who are intoxicated and in need of emergency medical aid, may be fully met.

(2) The division in implementing the statewide plan shall utilize to the fullest extent possible the facilities of regional or community mental health facilities presently existing or to be established hereafter along with any facility or program of a county, municipality or private organization. The division shall coordinate implementation of its statewide plan with existing or planned programs of regional and local public and private organizations.

(3) The statewide plan of the division shall include, but need not be limited to, the following public or private treatment services and facilities:

(a) Emergency medical-social services and facilities to render emergency medical care including detoxication and emergency social services. Such facilities and services shall provide for the immediate physical and social needs including the needs for medication and shelter of intoxicated persons, and shall also provide for initial examination, diagnosis and referral. Each such facility or service shall be affiliated with or constitute a part of the general medical service of a licensed hospital or other medical facility, but need not be physically a part of such hospital or facility.

(b) Out-patient facilities, including but not limited to clinics, vocational rehabilitation services and community mental health facilities.

(c) Intermediate care services, including but not limited to partial hospitalization and supportive residential facilities such as halfway houses, nursing homes, nursing care facilities and community mental health facilities. The intermediate care facilities may be operated by or may be jointly operated with state or local, public or private agencies approved by the division.

(d) In-patient short term or extended care facilities for diagnostic study, intensive study, treatment and rehabilitation of alcoholics, which may be part of public or private licensed hospitals, mental hospitals or community mental health facilities, and may be provided to inmates of any correctional facility.

(e) After-care services for patients.

HISTORY:

Laws, 1974, ch. 562, § 5(1-3), eff from and after July 1, 1974.

Cross References —

Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

§ 41-30-11. Statewide plan; use of local and private facilities; acceptance and expenditures of gifts, grants, etc.

The division, subject to applicable provisions of law, may arrange for the use of local and private treatment facilities on a cooperative basis by contractual, cost-sharing, or other method of joint or shared support whenever the director, subject to the policies of the board, considers this to be the most effective and economical course to follow. Authority is granted to the division to accept, receive, administer and expend any moneys or materials, gifts or grants from whatever source, and to contract for services with or make grants to any governmental units, agencies or departments, federal, state or local, and any treatment resource having available approved treatment, rehabilitation or educational services relating to alcoholism, but this chapter shall not affect the right of any institution under the jurisdiction of the board of trustees of mental institutions to apply for, receive or expend federal funds.

HISTORY:

Laws, 1974, ch. 562, § 5(4), eff from and after July 1, 1974.

Editor's Notes —

The board of trustees of mental institutions has been abolished and its duties, responsibilities and authority is vested in the state board of mental health. See § 41-4-11.

Cross References —

Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

§ 41-30-13. Statewide plan; approval or certification of facilities.

The division shall approve or certify all private and public treatment facilities as an approved facility under the statewide plan before such facility shall be eligible to receive any funds to which it may be entitled under the provisions of this chapter. Such approved status shall be valid for one (1) calendar year, and each facility shall apply for a renewal of its approved status within thirty (30) days before the date of expiration of the approved status.

HISTORY:

Laws, 1974, ch. 562, § 5(5), eff from and after July 1, 1974.

Cross References —

Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

§ 41-30-15. Rules and regulations.

The division shall adopt, amend, promulgate and enforce such rules and regulations as may be deemed necessary to carry out the purposes of this chapter, including those criteria for approved facilities.

HISTORY:
Laws, 1974, ch. 562, § 6(1), eff from and after July 1, 1974.

Cross References —
Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

§ 41-30-17. Inspections.

The division shall periodically inspect all approved facilities at reasonable times and in a reasonable manner.

HISTORY:
Laws, 1974, ch. 562, § 6(2), eff from and after July 1, 1974.

Cross References —
Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

§ 41-30-19. Treatment of public intoxicated offenders in lieu of execution of sentence.

The judge of any court, before whom appears an individual charged with a second or subsequent offense of public intoxication, may, upon a plea of guilty or conviction suspend execution of sentence and require the offender to participate in and complete a prescribed course of alcohol abuse treatment and rehabilitation. The judge shall consult with the division to determine the course of treatment best suited to the needs of the convicted person. The convicted person while participating in the course of treatment shall not be considered committed, civilly or criminally, as otherwise provided by law for commitment to any institution; provided that no judge may require in-patient care for a period in excess of ninety (90) days. Upon completion of the course of treatment prescribed by the judge, the sentence shall not be executed. The convicted person, if financially able, shall be responsible for defraying any cost of the prescribed course of treatment.

HISTORY:
Laws, 1974, ch. 562, § 7, eff from and after July 1, 1974.

Cross References —
Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

RESEARCH REFERENCES

ALR.
Location of offense as "public" within requirement of enactments against drunkenness. 8 A.L.R.3d 930.

Prosecution of chronic alcoholic for drunkenness offenses. 40 A.L.R.3d 321.

§ 41-30-21. Voluntary submission to treatment for alcoholism or drug dependency; application.

Any person may voluntarily apply for treatment for alcoholism, drug addiction, substance dependency or drug dependency, directly to any approved public or private treatment facility. If the patient is a minor or an incompetent, the application for voluntary inpatient, intermediate, or outpatient treatment, and the request for discharge from an inpatient institution, shall be made by his parent, legal guardian, or other representative.

HISTORY:
Laws, 1974, ch. 562, § 8(1), eff from and after July 1, 1974.

Cross References —
Guardians for drunkards, generally, see §§ 93-13-131, 93-13-133.

Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

§ 41-30-23. Voluntary submission to treatment; admission and duration of in-patient treatment.

The administrator in charge of any approved public or private in-patient, out-patient, or intermediate facility, subject to the rules and regulations established by the division, may determine who shall be admitted for treatment; provided no person shall be retained by the treatment facility upon voluntary commitment on an in-patient basis for a period in excess of thirty (30) days.

HISTORY:
Laws, 1974, ch. 562, § 8(2), eff from and after July 1, 1974.

Cross References —
Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

§ 41-30-25. After-care treatment and assistance.

Upon his or her discharge from, or upon leaving, an approved public or private treatment facility, a patient who was receiving treatment for alcoholism or for drug addiction or dependency shall be encouraged to consent to appropriate outpatient, intermediate care, or other after-care treatment. If it appears to the administrator in charge of the treatment facility, upon the advice of the attending physician, that the patient is an alcoholic or drug addict who requires such help, the division shall make a reasonable effort to arrange for assistance in obtaining supportive services and residential facilities for the patient, such as maintenance in a hotel or halfway house operated by the division or by any other public or private agency.

HISTORY:
Laws, 1974, ch. 562, § 8(3); Laws, 2016, ch. 449, § 1, eff from and after July 1, 2016.

Cross References —
Proceedings pertaining to the adjudication, commitment, and release of narcotics and alco-

hol addicts, see Miss. R. Civ. P. 81.

§ 41-30-27. Emergency involuntary commitment; alcoholics; drug addicts.

(1)(a) A person may be admitted to an approved public or private treatment facility for emergency care and treatment upon a decree of the chancery court accepting an application for admission thereto accompanied by the certificate of two (2) licensed physicians. The application shall be to the chancery court of the county of such person's residence and may be made by any one (1) of the following: Either certifying physician, the patient's spouse or guardian, any relative of the patient, or any other person responsible for health, safety or welfare of all or part of the citizens within said chancery court's territorial jurisdiction. The application shall state facts to support the need for immediate commitment, including factual allegations showing that the person to be committed has threatened, attempted or actually inflicted physical harm upon himself or another. The physicians' certificates shall state that they examined the person within two (2) days of the certificate date and shall set out the facts to support the physicians' conclusion that the person is an alcoholic or drug addict who has lost the power of self-control with respect to the use of alcoholic beverages or habit-forming drugs and that unless immediately committed he is likely to inflict physical harm upon himself or others. A hearing on such applications shall be heard by the chancery court in term time or in vacation, and the hearing shall be held in the presence of the person sought to be admitted unless he fail or refuse to attend. Notice of the hearing shall be given to the person sought to be admitted, as soon as practicable after the examination by the certifying physicians, and the person sought to be admitted shall have an opportunity to be represented by counsel, and shall be entitled to have compulsory process for the attendance of witnesses.

(b) For the purpose of this section, the term "drug addict" shall have the meaning ascribed to it by Section 41-31-1(d).

(2) The chancery judge may refuse an application if in his opinion the application and certificate fail to sustain the grounds for commitment. Upon acceptance of the application after hearing thereon and decree sustaining the application by the judge, the person shall be transported to the facility by a peace officer, health officer, the applicant for commitment, the patient's spouse or the patient's guardian. The person shall be retained at the facility that admitted him, or be transferred to any other appropriate treatment resource, until discharged pursuant to subsection (3).

(3) The attending physician shall discharge any person committed pursuant to this section when he determines that the grounds for commitment no longer exist, but no person committed pursuant to this section shall be retained in any facility for more than five (5) days.

(4) The application filed pursuant to subsection (1) of this section shall also contain a petition for involuntary commitment pursuant to Title 41,

Chapter 31, Mississippi Code of 1972. If the application for emergency involuntary commitment is accepted under subsection (2) of this section, the chancery judge shall order a hearing on the petition for commitment pursuant to Title 41, Chapter 31, Mississippi Code of 1972, to be held on the fifth day of such involuntary emergency commitment, the provisions of Section 41-31-5 regarding the time of hearing to the contrary notwithstanding; provided, however, that at the time of such involuntary commitment the alleged alcoholic or drug addict shall be served with a citation to appear at said hearing and shall have an opportunity to be represented by counsel.

HISTORY:

Laws, 1974, ch. 562, § 9; Laws, 1983, ch. 335, eff from and after passage (approved March 14, 1983).

Cross References —

Commitment of alcoholics and drug addicts for treatment, see §§ 41-31-1 et seq.

Provisions of subsections (3) and (4) of this section are supplemental and in addition to the provisions of Chapter 31 of Title 41, which pertain to the commitment of alcoholics, see § 41-30-29.

Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

RESEARCH REFERENCES

Am. Jur.

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Form 17 et seq. (affidavit – of alcoholism – to accompany petition for hearing to determine competency of alleged incompetent).

1 Am. Jur. Proof of Facts, Alcoholism, Proof No. 1 (testimony of physician).

16 Am. Jur. Proof of Facts, Alcoholism, § 53 (commitment of the alcoholic).

Law Reviews.

Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue – Rules 16, 81 and 82. 52 Miss. L. J. 105, March 1982.

§ 41-30-29. Supplemental nature of provisions for emergency involuntary commitment.

The provisions of subsections (3) and (4) of Section 41-30-27 shall be supplemental and in addition to the provisions of Title 41, Chapter 31, Mississippi Code of 1972, which pertain to commitment of alcoholics.

HISTORY:

Laws, 1974, ch. 562, § 10(1), eff from and after July 1, 1974.

Cross References —

Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

§ 41-30-31. Involuntary commitment exceeding five days.

Involuntary commitment of an individual to an approved public or private treatment facility for treatment or rehabilitation for a period in excess of five (5) days shall be according to the provisions of Title 41, Chapter 31, Mississippi Code of 1972.

HISTORY:
Laws, 1974, ch. 562, § 10(2), eff from and after July 1, 1974.

Cross References —
Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

§ 41-30-33. Confidentiality of records; conditions for disclosure.

(1) The registration and other records of services by approved treatment facilities, whether in-patient, intermediate or out-patient, authorized by this chapter, shall remain confidential, and information which has been entered in the records shall be considered privileged information.

(2) No part of the records shall be disclosed without the consent of the person to whom it pertains, but appropriate disclosure may be made without such consent to treatment personnel for use in connection with his treatment and to counsel representing the person in any proceeding held pursuant to Title 41, Chapter 31, Mississippi Code of 1972. Disclosure may also be made without consent upon court order for purposes unrelated to treatment after application showing good cause therefor. In determining whether there is good cause for disclosure, the court shall weigh the need for the information to be disclosed against the possible harm of disclosure to the person to whom such information pertains.

HISTORY:
Laws, 1974, ch. 562, § 11, eff from and after July 1, 1974.

Cross References —
Confidentiality of records in the commitment of alcoholics, see § 41-31-17.

Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

OPINIONS OF THE ATTORNEY GENERAL

Generally, most medical records in a mental commitment file in the office of the Chancery Clerk will fall under one or more of the exemptions to the Public Records Act; exempt records should not be released or kept open to the public absent a court order or authorized consent. 2002 Miss. Op. Att'y Gen. 543.

§ 41-30-35. Charge against person treated and his estate.

Reasonable charges and expenses for the care, maintenance and treatment of alcoholics in any approved public treatment facility under any provision of this chapter shall be a lawful charge against the person and estate of said alcoholic.

HISTORY:
Laws, 1974, ch. 562, § 12(1), eff from and after July 1, 1974.

Cross References —
Costs of commitment and support of alcoholics, see § 41-31-15.

Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

RESEARCH REFERENCES

Am. Jur.
14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 201 et seq. (expenses of support and treatment of incompetent).

§ 41-30-37. Right of private facility to payment for services.

Notwithstanding anything to the contrary in this chapter, no approved private treatment facility, whether an out-patient or an in-patient unit, shall be required to accept any person for treatment through commitment proceedings or otherwise, unless adequate arrangements for payment of the cost of such services are made, whether paid by the patient or by the state.

HISTORY:
Laws, 1974, ch. 562, § 12(2), eff from and after July 1, 1974.

Cross References —
Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

§ 41-30-39. Repealed.

Repealed by Laws, 2017, ch. 402, § 4, effective from and after July 1, 2017.
§ 41-30-39. [Laws, 1974, ch. 562, § 13, eff from and after July 1, 1974.]

Editor's Notes —
Former § 41-30-39 prescribed the duties of the Advisory Committee on Alcohol Abuse and Alcoholism of the Advisory Council on Comprehensive Health Planning of the Office of the Governor.

CHAPTER 31.

COMMITMENT OF ALCOHOLICS AND DRUG ADDICTS FOR TREATMENT

Sec.	
41-31-1.	Definitions.
41-31-3.	Petition for detention, care and treatment.
41-31-5.	Proceeding on petition.
41-31-7.	Appeals.
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41-31-11.	Transferring of patients.
41-31-13.	Probation and discharge.
41-31-15.	Costs of commitment and support.
41-31-17.	Rights as citizens; confidentiality of records.
41-31-19.	Commitment proceedings for persons with mental illness committed under this chapter.
41-31-21.	Refusal of admittance to certain persons.
41-31-23.	Providing alcoholic beverages to persons in custody of institution.

§ 41-31-1. Definitions.

As used in this chapter, the following words and phrases shall have the meaning hereinafter ascribed to them, unless the context requires a different meaning, to-wit:

(a) An "alcoholic" shall mean any person who chronically and habitually uses alcoholic beverages to the extent that he has lost the power of self-control with respect to the use of such beverages, or any person who, while chronically under the influence of alcoholic beverages, endangers public morals, health, safety or welfare.

(b) "Alcoholic beverage" shall mean and include alcoholic spirits, liquors, wines, beer, and every liquid or fluid, patented or not, containing alcoholic spirits, wine or beer, which is capable of being consumed by human beings and produces or results in intoxication in any form or degree.

(c) "Alcoholism" shall mean any condition of abnormal behavior or illness resulting directly or indirectly from the chronic and habitual use of alcoholic beverages.

(d) A "drug addict" shall mean any person who chronically and habitually uses any form of habit-forming drugs, such as opiates and the derivatives thereof, barbiturates, and every tablet, powder, substance, liquid or fluid, patented or not, containing habit-forming drugs if same is capable of being used by human beings and produces drug addiction in any form or degree.

(e) "Drug addiction" shall mean and include any condition of abnormal behavior or illness resulting directly or indirectly from the chronic and habitual use of habit-forming drugs.

(f) "Hospital" or "institution" shall mean either the Mississippi State Hospital, at Whitfield, Mississippi, or the East Mississippi State Hospital, at Meridian, Mississippi, and shall include the grounds thereof and the facilities used for the treatment of alcoholics and the drug addicts.

(g) "Medical director" shall mean the physician in charge of said Mississippi State Hospital or East Mississippi State Hospital, as the case may be.

HISTORY:
Codes, 1942, § 436-01; Laws, 1950, ch. 349, § 1.

Cross References —
Drug Courts, see §§ 9-23-1 et seq.

Establishment and functions of the state board of mental health and the state department of mental health in connection with services provided for alcoholics and drug dependent persons, see §§ 41-4-1 et seq.

State mental institutions, see §§ 41-17-1 et seq.

Commitment of persons in need of mental treatment, see §§ 41-21-61 et seq.

Regulation of drugs, narcotics and poisons, see §§ 41-29-1 et seq.

Statewide plan of detection and treatment of alcoholics, see §§ 41-30-1 et seq.

Emergency involuntary commitment of an alcoholic or drug addict, see § 41-30-27.

Involuntary commitment of alcoholics and drug addicts to private treatment facilities, see §§ 41-32-1 et seq.

Participation in a drug identification program, see §§ 47-5-501 et seq.

Coverage of alcoholism care and treatment in accident or sickness insurance policy, see §§ 83-9-27 et seq.

Guardians for drunkards and drug addicts, generally, see §§ 93-13-131, 93-13-133.

OPINIONS OF THE ATTORNEY GENERAL

The department of public safety of a community hospital does not have authority to issue traffic citations on the public streets surrounding the hospital or to persons operating a motor vehicle on the hospital's premises. 2005 Miss. Op. Att'y Gen. 498.

RESEARCH REFERENCES

ALR.
Validity and construction of statutes providing for civil commitment of arrested narcotic addicts. 98 A.L.R.2d 726.

Am. Jur.
25 Am. Jur. 2d, Drugs and Controlled Substances §§ 266 et seq.

1 Am. Jur. Proof of Facts, Alcoholism, Proof No. 1 (testimony of physician).

4 Am. Jur. Proof of Facts, Drugs, Proof No. 1 (use of drugs other than that called for in prescription).

13 Am. Jur. Proof of Facts, Criminal Drug Addiction and Possession, Proof No. 1 (illegal possession or use of drug).

13 Am. Jur. Proof of Facts, Criminal Drug Addiction and Possession, Proof No. 2 (identification of substance as a drug through testimony of expert).

16 Am. Jur. Proof of Facts, Alcoholism, § 53 (commitment of the alcoholic).

CJS.
14 C.J.S., Chemical Dependents §§ 4–6, 20–22 et seq.

Law Reviews.
Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue – Rules 16, 81 and 82. 52 Miss. L. J. 105, March 1982.

§ 41-31-3. Petition for detention, care and treatment.

Proceedings for detention, care and treatment of any person alleged to be an alcoholic or drug addict may be initiated or instituted by such person's husband, wife, child, mother, father, next of kin, or by any friend or relative thereof, or by the county health officer. Such proceedings shall be instituted by the filing of a sworn petition or application in the chancery court of the county of such person's residence or of the county in which he may be found. It shall be necessary that said petition allege that such person is an alcoholic or drug addict, as the case may be, is a resident citizen of this state, and because of his alcoholism or drug addiction is incapable of or unfit to look after and conduct his affairs, or is dangerous to himself or others, or has lost the power of self-control because of periodic, constant or frequent use of alcoholic beverages or habit-forming drugs, and that he is in need of care and treatment, and that his detention, care and treatment at an institution will improve his health. All proceedings authorized by this chapter may be had and conducted either in termtime or in vacation of said court.

HISTORY:

Codes, 1942, § 436-02; Laws, 1950, ch. 349, § 2; Laws, 1976, ch. 401, § 7, eff from and after July 1, 1976.

Cross References —

Emergency involuntary commitment of an alcoholic or drug addict, see § 41-30-27.

RESEARCH REFERENCES

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 266 et seq.

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Form 17 et seq. (affidavit – of alcoholism – to accompany petition for hearing to determine competency of alleged incompetent).

CJS.

14 C.J.S., Chemical Dependents §§ 4–6, 20–22 et seq.

§ 41-31-5. Proceeding on petition.

Whenever such a petition shall be filed the chancellor of said court shall, by order, fix a time upon a day certain for the hearing thereof, either in termtime or in vacation, which hearing shall be fixed not less than five (5) days nor more than twenty (20) days from the filing of said petition. The person alleged to be an alcoholic or drug addict shall be served with a citation to appear at said hearing not less than three (3) days prior to the day fixed for said hearing, and there shall be served with such citation a true and correct copy of said petition. At the time fixed, the chancellor shall hear evidence on said petition, with or without the presence of the alleged alcoholic or drug addict, and all persons interested shall have the right to appear and present evidence touching upon the truth and correctness of the allegations of said petition. The said chancellor, in his discretion, may require that the alleged alcoholic or drug addict be examined by the county health officer or by such other competent physician or physicians as the chancellor may select, and may consider the results of such examination in reaching a decision in said matter. If the alleged alcoholic or drug addict shall admit the truth and correctness of the allegations of said petition, or if the chancellor should find from the evidence that such person is an alcoholic or drug addict, and is in need of detention, care and treatment in an institution, and that the other material allegations of said petition are true, then he shall enter an order so finding, and shall order that such person be remanded and committed to and confined in the proper state institution or in the case of an alcoholic to an approved public or private treatment facility pursuant to the provisions of Chapter 30 of Title 41, Mississippi Code of 1972, for care and treatment for a period of not less than thirty (30) days nor more than ninety (90) days as the necessity of the case may, in his discretion, require. However, when such person shall be so committed, the medical director of the said institution shall be vested with full discretion as to the treatment and discharge of such person, and may discharge and release such person at any time when the condition of such person shall so justify.

HISTORY:
Codes, 1942, § 436-03; Laws, 1950, ch. 349, § 3; Laws, 1974, ch. 562, § 14, eff from and after July 1, 1974.

Cross References —
Emergency involuntary commitment of an alcoholic or drug addict, see § 41-30-27.

RESEARCH REFERENCES

Am. Jur.
16 Am. Jur. Proof of Facts, Alcoholism, § 53 (commitment of the alcoholic).

§ 41-31-7. Appeals.

Any person who shall be ordered to be committed to an institution as provided in this chapter, and who shall feel aggrieved at such decision, may appeal therefrom to the supreme court of this state by giving notice thereof in the manner provided by law and by furnishing a good and sufficient bond in an amount to be fixed by the chancellor, and to be approved by the clerk of said court, which said bond shall be conditioned to pay all costs of the proceedings and the appeal, and that said person will appear to abide the decision of the court on such appeal. On such appeal, the record shall be made and prepared as in other cases, and all of the provisions of the general law shall apply thereto except that it shall be necessary that the proper notice be given and the requisite bond furnished within five (5) days from the date of the final determination of the chancellor.

HISTORY:
Codes, 1942, § 436-04; Laws, 1950, ch. 349, § 4.

§ 41-31-9. Enforcement of orders.

The chancellor shall have the power to order the issuance of such writs and other process as may be necessary to enforce his orders in such matters, including writs directed to the sheriff of any proper county to take such person into custody and to deliver him to the director of the proper institution. Such writs and other process shall be issued and executed accordingly.

HISTORY:
Codes, 1942, § 436-05; Laws, 1950, ch. 349, § 5.

RESEARCH REFERENCES

Am. Jur.
14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Form 161 et seq. (warrant – for commitment).

§ 41-31-11. Transferring of patients.

The medical director of the Mississippi State Hospital or the East Mississippi State Hospital may, subject to the regulations of the board of trustees of mental institutions, transfer alcoholics or drug addicts from one institution used for the commitment of alcoholics and drug addicts to another institution, or from one department in any institution to another as is deemed necessary for their care and treatment.

HISTORY:
Codes, 1942, § 436-06; Laws, 1950, ch. 349, § 6.

§ 41-31-13. Probation and discharge.

Any person committed to the custody of the Mississippi State Hospital or the East Mississippi Hospital may, notwithstanding the terms of any order of commitment, be permitted by the medical director or his authorized agent, to go at large on probation and without custody or restraint for such time and under such conditions as such medical director shall judge best. All persons committed to the custody of the Mississippi State Hospital or the East Mississippi State Hospital may be discharged by the director pursuant to its regulations, notwithstanding the terms of any order of commitment.

HISTORY:
Codes, 1942, § 436-07; Laws, 1950, ch. 349, § 7.

RESEARCH REFERENCES

CJS.
14 C.J.S., Chemical Dependents §§ 3, 29.

§ 41-31-15. Costs of commitment and support.

The provisions of the law with respect to the costs of commitment and the cost of support, including the prohibition in Section 41-21-65 regarding the charging of extra fees and expenses to persons initiating commitment proceedings, methods of determination of persons liable therefor, and methods of determination of financial ability, and all provisions of law enabling the state to secure reimbursement of any such items of cost, applicable to the commitment to and support of the mentally ill persons in state hospitals, shall apply with equal force in respect to each item of expense incurred by the state in connection with the commitment, care, custody, treatment, and rehabilitation of any person committed to the state hospitals and maintained in any institution or hospital operated by the State of Mississippi under the provisions of this chapter.

HISTORY:
Codes, 1942, § 436-08; Laws, 1950, ch. 349, § 8; Laws, 2010, ch. 398, § 7, eff from and after July 1, 2010.

Cross References —

Chancery court clerk fee for commitment action, see § 25-7-9.

Cost of treatment of an alcoholic as a charge against his person and estate, see § 41-30-35.

RESEARCH REFERENCES

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 266 et seq.

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 201 et seq. (expenses of support and treatment of incompetent).

CJS.

14 C.J.S., Chemical Dependents §§ 4–6, 20–22 et seq.

§ 41-31-17. Rights as citizens; confidentiality of records.

No person who is committed to the Mississippi State Hospital or the East Mississippi State Hospital for treatment under the provisions of this chapter shall forfeit or be abridged thereby of any of his or her rights as a citizen of the United States or of the State of Mississippi. The records pertaining to any person committed to the Mississippi State Hospital or the East Mississippi State Hospital for treatment, care, guidance and rehabilitation shall be confidential, and the contents thereof shall not be divulged except on an order of a court of competent jurisdiction or a signed waiver by the person committed. However, information in regard to cancer about any such patients who might have cancer shall be provided to the state board of health as the official tumor registry agency, which information shall be used to provide statistical reports only. The agency shall not divulge any patient's name in regard to any case history nor statistical compilation.

HISTORY:

Codes, 1942, § 436-09; Laws, 1950, ch. 349, § 9; Laws, 1968, ch. 441, § 5, eff from and after passage (approved July 17, 1968).

Editor's Notes —

Former § 41-3-23, which designated the State Board of Health as the tumor registry agency of the state, was repealed by Laws of 1982, ch. 494, § 1, effective from and after July 1, 1982.

Cross References —

Emergency involuntary commitment of an alcoholic or drug addict, see § 41-30-27.

Confidentiality of records under statewide plan for detection and treatment of alcoholics, see § 41-30-33.

OPINIONS OF THE ATTORNEY GENERAL

Generally, most medical records in a mental commitment file in the office of the Chancery Clerk will fall under one or more of the exemptions to the Public Records Act; exempt records should not be released or kept open to the public absent a court order or authorized consent. 2002 Miss. Op. Att'y Gen. 543.

§ 41-31-19. Commitment proceedings for persons with mental illness committed under this chapter.

The medical director of the hospital may bring commitment proceedings under the provisions of the proper statute in the county wherein the person involved is restrained for commitment to such institution as shall be proper, if said person is found to be suffering from a mental or nervous condition or affliction requiring his adjudication and commitment under said statute.

HISTORY:
Codes, 1492, § 436-10; Laws, 1950, ch. 349, § 10.

Cross References —
State mental institutions, see §§ 41-17-1 et seq.

Commitment of persons in need of mental treatment, see §§ 41-21-61 et seq.

RESEARCH REFERENCES

Am. Jur.
25 Am. Jur. 2d, Drugs and Controlled Substances §§ 266 et seq.

CJS.
14 C.J.S., Chemical Dependents §§ 4–6, 20–22 et seq.

§ 41-31-21. Refusal of admittance to certain persons.

If in the opinion of the medical director of the Mississippi State Hospital or the East Mississippi State Hospital, any person willfully and consistently fails to be rehabilitated after three commitments to any state institution, said medical director may refuse further admission to such person notwithstanding the order of any court, unless such person on the fourth or any succeeding commitment be committed by an order of the chancery court as provided by this chapter, and before entering said institution on a fourth or any succeeding commitment, such person, or someone for such person committed, shall pay to said institution the sum of Fifty Dollars ($50.00) per month in advance for the care, custody, support and maintenance of such person in said institution.

Such person, or someone for such person, failing or refusing to make the payment herein provided, before admission on a fourth or succeeding commitment, or any time during said commitment, shall be cause for the medical director of such institution to refuse admission of such person committed under this chapter, or to dismiss such person committed under this chapter after commitment.

The monthly payment herein provided shall be a condition precedent to admission of a person on a fourth or subsequent commitment, and shall be made each month thereafter in advance on or before the last day of the preceding month for which payment is due.

There shall be no refunds of the monthly payment herein provided on account of such person committed hereunder having failed to remain a full month at such institution.

HISTORY:
Codes, 1492, § 436-11; Laws, 1950, ch. 349, § 11; Laws, 1954, ch. 231.

RESEARCH REFERENCES

CJS.
14 C.J.S., Chemical Dependents §§ 4–6, 13 et seq.

§ 41-31-23. Providing alcoholic beverages to persons in custody of institution.

Any person who shall give, sell, deliver, or otherwise provide any alcoholic beverages or drug, regardless of the quantity thereof, to any person who is confined in an institution or hospital for care and treatment under this chapter for alcoholism or drug addiction shall be guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not less than Five Hundred Dollars ($500.00), nor more than One Thousand Dollars ($1,000.00), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment in the discretion of the court. However, the staff of such institution or hospital may administer alcohol or drugs in the course of treatment in strict accordance with the prescriptions of a physician of such institution.

HISTORY:
Codes, 1942, § 436-12; Laws, 1950, ch. 349, § 12.

Cross References —
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR.
Physician's liability to third person for prescribing drug to known drug addict. 42 A.L.R.4th 586.

CHAPTER 32.

COMMITMENT OF ALCOHOLICS AND DRUG ADDICTS TO PRIVATE TREATMENT FACILITIES

Sec.

41-32-1. Scope of chapter; involuntary commitment upon judgment of chancery court.
41-32-3. Complaint.
41-32-5. Hearing; order for commitment; period of confinement.
41-32-7. Earlier hearing for defendant who could flee jurisdiction or cause physical harm; interim commitment.
41-32-9. Appeal of commitment decision.
41-32-11. Assistance of county sheriff in confining and transporting defendant.

§ 41-32-1. Scope of chapter; involuntary commitment upon judgment of chancery court.

The provisions of this chapter shall be supplemental to the provision of Title 41, Chapters 30 and 31, Mississippi Code of 1972. A person may be involuntarily committed for alcoholism or drug addiction, or both, to a private treatment facility, upon a judgment of the chancery court of the county of such person's residence, or in the county where such person may be found.

HISTORY:
Laws, 1983, ch. 456, § 1, eff from and after July 1, 1983.

Cross References —
Drug Courts, see §§ 9-23-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Fee in alcohol/drug commitment proceedings is $75. 1993 Miss. Op. Att'y Gen. 514.

RESEARCH REFERENCES

ALR.
Validity and construction of statutes providing for civil commitment of arrested narcotic addicts. 98 A.L.R.2d 726.

Civil liability for physical measures undertaken in connection with treatment of mentally disordered patient. 8 A.L.R.4th 464.

Am. Jur.
25 Am. Jur. 2d, Drugs and Controlled Substances §§ 266 et seq.

1 Am. Jur. Proof of Facts, Alcoholism, Proof No. 1 (testimony of physician).

4 Am. Jur. Proof of Facts, Drugs, Proof No. 1 (use of drugs other than that called for in prescription).

13 Am. Jur. Proof of Facts, Criminal Drug Addiction and Possession, Proof No. 1 (illegal possession or use of drug).

13 Am. Jur. Proof of Facts, Criminal Drug Addiction and Possession, Proof No. 2 (identification of substance as a drug through testimony of expert).

16 Am. Jur. Proof of Facts, Alcoholism, § 53 (commitment of the alcoholic).

CJS.
14 C.J.S., Chemical Dependents §§ 4–6, 20–22 et seq.

Law Reviews.
Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue – Rules 16, 81 and 82. 52 Miss. L. J. 105, March 1982.

§ 41-32-3. Complaint.

Any interested person may file a complaint with the chancery court for a judgment of committal in termtime or in vacation. The complaint shall state facts to establish: (a) the defendant is an alcoholic or drug addict, i.e., he is powerless over alcohol or drugs, or both, and his life has thereby become unmanageable; (b) defendant's mental and physical health, his continued family life or his position in the community are dependent on his treatment at a chemical dependency unit, alcohol and drug unit, outpatient house or another private treatment facility, or combination of facilities, providing treatment for chemically dependent persons; (c) the defendant has refused to commit himself to such private treatment facility, though having been requested so to do by persons who genuinely care for his well-being; (d) the complainant has selected a particular private treatment facility which, if located in this state, has been approved by the department of mental health, division of alcohol and drug abuse; (e) the complainant has made adequate financial arrangements for defendant's treatment at such facility; and (f) such facility has approved the admission of the defendant, subject to commitment by the chancery court.

HISTORY:
Laws, 1983, ch. 456, § 2, eff from and after July 1, 1983.

§ 41-32-5. Hearing; order for commitment; period of confinement.

The chancellor shall schedule with the complainant a time on a day certain for the hearing thereof, not less than five (5) days nor more than twenty (20) days from the filing of the complaint. The case shall be triable upon three (3) days' service of process and service of notice of the time for the hearing. At the time fixed, the chancellor shall hear the evidence in the presence of the defendant if he will appear, and without the presence of the defendant if he will not appear, and all persons interested shall have the right to appear and present evidence touching upon the truth and correctness of the allegations of the complaint. If the defendant admits the truth and correctness of the allegations of the complaint, or if the chancellor shall find from the evidence that the defendant is an alcoholic or drug addict, or both, and is in need of detention, care and treatment in a private treatment facility, and that the other material allegations of the complaint are true, then the chancellor shall enter a judgment so finding, and shall order that such person be committed to and confined in a chemical dependency unit, alcohol and drug unit, outpatient house or any other private treatment facility, within or outside the state, for the treatment of chemically dependent persons, as the chancellor, in his discretion, deems to be in the best interest of the defendant. Any such order for the commitment of the defendant shall require that the defendant be committed for such period of time as the chancellor shall determine, in his discretion, as is necessary to provide for the care and treatment of the defendant or for such other period of time as may be established by authorized personnel at the designated facility or facilities; provided, however, in no event shall such period of confinement extend beyond a period of eight (8) months. The chancellor may require treatment at a combination of facilities or may designate commitment at an inpatient facility for not more than two (2) months and an outpatient facility for not more than six (6) months, subject to institutional earlier release.

HISTORY:
Laws, 1983, ch. 456, § 3, eff from and after July 1, 1983.

RESEARCH REFERENCES

Am. Jur.
25 Am. Jur. 2d, Drugs and Controlled Substances §§ 266 et seq.
1 Am. Jur. Proof of Facts, Alcoholism, Proof No. 1 (testimony of physician).
4 Am. Jur. Proof of Facts, Drugs, Proof No. 1 (use of drugs other than that called for in prescription).
13 Am. Jur. Proof of Facts, Criminal Drug Addiction and Possession, Proof No. 1 (illegal possession or use of drug).
13 Am. Jur. Proof of Facts, Criminal Drug Addiction and Possession, Proof No. 2 (identification of substance as a drug through testimony of expert).
16 Am. Jur. Proof of Facts, Alcoholism, § 53 (commitment of the alcoholic).

CJS.
14 C.J.S., Chemical Dependents §§ 4–6, 20–22 et seq.

Law Reviews.
Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue – Rules 16, 81 and 82. 52 Miss. L. J. 105, March 1982.

§ 41-32-7. Earlier hearing for defendant who could flee jurisdiction or cause physical harm; interim commitment.

Upon allegation in the complaint and upon clear and convincing proof that the defendant is under the influence of alcohol or drugs, or both, to the extent that if the defendant is served with process he will, in all likelihood, flee the jurisdiction of the court or physically harm himself or others, then the chancellor may, in his discretion, set the matter for hearing not more than five (5) days, excluding Saturdays, Sundays and legal holidays, from the filing of the complaint, and order the defendant committed and confined, without notice, until the hearing, to a chemical dependency unit, alcohol and drug unit, outpatient house or any other private facility for the treatment of chemically dependent persons.

HISTORY:
Laws, 1983, ch. 456, § 4, eff from and after July 1, 1983.

Cross References —
Emergency involuntary commitment of alcoholic at approved public or private facility, see § 41-30-27.

RESEARCH REFERENCES

Law Reviews.
Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue – Rules 16, 81 and 82. 52 Miss. L. J. 105, March 1982.

§ 41-32-9. Appeal of commitment decision.

Any person who shall be ordered to be committed to a private treatment facility as provided in this chapter, and who shall feel aggrieved at such decision, may appeal therefrom to the supreme court of this state by giving notice thereof in the manner provided by law and by furnishing a good and sufficient bond in an amount to be fixed by the chancellor, and to be approved by the clerk of said court, such bond to be conditioned to pay all costs of the proceedings and the appeal, and that said person will appear to abide the decision of the court on such appeal. On such appeal, the record shall be made and prepared as in other cases, and all of the provisions of the general law shall apply thereto except that it shall be necessary that the proper notice be given and the requisite bond furnished within five (5) days from the date of the final determination of the chancellor.

HISTORY:
Laws, 1983, ch. 456, § 5, eff from and after July 1, 1983.

JUDICIAL DECISIONS

1. In general.
Chancery Court did not abuse its discretion in denying stay, pending appeal, of order that individual surrender himself to center for treatment of alcoholism, because matters of stay or supersedeas and conditions thereof are discretionary with Chancery Court when appeal is taken under this section. McIntire v. Moore, 512 So. 2d 687, 1987 Miss. LEXIS 2760 (Miss. 1987).

§ 41-32-11. Assistance of county sheriff in confining and transporting defendant.

The chancellor may order assistance by the sheriff of the county, or any other county in confining and transporting the defendant to the facility, at the expense of complainant.

HISTORY:
Laws, 1983, ch. 456, § 6, eff from and after July 1, 1983.

CHAPTER 33.

TUBERCULOSIS AND RESPIRATORY DISEASES; TUBERCULOSIS SANATORIUM

Sec.
41-33-1. "Active tuberculosis" defined.
41-33-3. Compulsory commitment of active tuberculosis cases to hospital.
41-33-5. Request for approval of court action for commitment.
41-33-7. Affidavit and hearing in chancery court.
41-33-9. Order of commitment to hospital.
41-33-11. Discharge from hospital.
41-33-13. Cost of hospital care.
41-33-15. Submission to medical examination.
41-33-17 through 41-33-39. Repealed.

§ 41-33-1. "Active tuberculosis" defined.

For the purposes of Sections 41-33-1 through 41-33-15, the words "active tuberculosis" shall be construed to mean that tuberculosis is present in a communicable or infectious stage as established by chest x-ray, laboratory examination of sputum or other fluids, or tissues from the patient, or other methods approved by the executive officer of the state board of health.

HISTORY:
Codes, 1942, § 7076-01; Laws, 1956, ch. 304, § 1; Laws, 1983, ch. 522, § 18, eff from and after July 1, 1983.

Cross References —
Communicable and infectious diseases, generally, see §§ 41-23-1 et seq.

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. 2d, Health §§ 58 et seq.

CJS.
39A C.J.S., Health and Environment §§ 21 et seq.

§ 41-33-3. Compulsory commitment of active tuberculosis cases to hospital.

Any person who has been diagnosed as having active tuberculosis and who fails or refuses to carry out minimum precautions outlined to him in writing by the county health officer for the prevention of spread of the disease to another may be committed under duress to any hospital under contract with the state department of health providing services to the tuberculosis patients or any facility of the Mississippi Department of Corrections under contract capable of adequately isolating patients with tuberculosis so long as his disease is active or until such time as it is believed by the county health officer that he will carry out suitable precautions at home to prevent spread of the disease. Any contractual agreement between the Mississippi Department of Corrections and the state department of health shall be voluntary, discretionary and mutually agreed upon by the contracting parties.

HISTORY:
Codes, 1942, § 7076-02; Laws, 1956, ch. 304, § 2; Laws, 1983, ch. 522, § 19; Laws, 1984, ch. 435, § 1, eff from and after July 1, 1984.

Cross References —
Duties of county health officer, generally, see § 41-3-41.

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. 2d, Health § 53.

CJS.
39A C.J.S., Health and Environment §§ 31-38.

§ 41-33-5. Request for approval of court action for commitment.

When the county health officer in any county deems that it is necessary for the protection of the public health for any person who has active tuberculosis to be committed for treatment under duress and desires to proceed with commitment, he shall present in writing to the executive officer of the state board of health a request for his approval of court action to require care. Such request shall include an outline of the facts which show the necessity of commitment.

HISTORY:
Codes, 1942, § 7076-03; Laws, 1956, ch. 304, § 3; Laws, 1983, ch. 522, § 20, eff from and after July 1, 1983.

§ 41-33-7. Affidavit and hearing in chancery court.

Upon approval by the executive officer of the Mississippi State Board of Health, the county health officer may make affidavit and file it with the clerk of the chancery court of any county in which such person might then be found. Such affidavit shall request that such person be adjudged to be suffering from active tuberculosis and that such person be committed to and confined in any hospital under contract with the state board of health providing services to tuberculosis patients or any facility of the Mississippi Department of Corrections under contract capable of adequately isolating patients with tuberculosis.

Whenever such affidavit shall be filed with the chancery clerk, the said clerk, or the chancellor of said court, shall issue a citation ordering said person alleged to be suffering from such active tuberculosis to appear and show cause why he should not be committed to and confined in a hospital for treatment of tuberculosis in Mississippi or any facility of the Mississippi Department of Corrections under contract capable of adequately isolating patients with tuberculosis. At the same time that the sheriff serves the citation he shall deliver to such person a copy of the county health officer's request of approval of contemplated action and a copy of the approval of such action by the executive officer of the Mississippi State Board of Health.

The hearing shall be conducted in open court and the person alleged to be suffering from active tuberculosis shall have the privilege of counsel of his own selection. Said hearing shall be held on a day not less than five (5) days from the date of such service of citation. Provided, however, the chancellor may order the hearing at an earlier day when, in his discretion, he deems such to be in the interest of the public health.

HISTORY:
Codes, 1942, § 7076-04; Laws, 1956, ch. 304, § 4; Laws, 1976, ch. 324; Laws, 1983, ch. 522, § 21; Laws, 1984, ch. 435, § 2, eff from and after July 1, 1984.

RESEARCH REFERENCES

ALR.
Liability for wrongful autopsy. 18 A.L.R.4th 858.

§ 41-33-9. Order of commitment to hospital.

If at the hearing the court shall find that the person is suffering from active tuberculosis and that his commitment is in the best interest of the public's health, an order adjudging such fact shall be entered and the clerk shall issue a writ directed to the sheriff to deliver such person to the hospital or facility of the Mississippi Department of Corrections under contract ordered by the court, and such sheriff shall execute such writ and deliver such person accordingly.

The order of the court shall further provide that such person shall submit to such reasonable rules and regulations as may be found necessary for his treatment and the protection of other persons. The chancery court shall have continuing jurisdiction of such person until it is determined by the county health officer that he or she no longer threatens the public health, and if such person violates any of the provisions of the order of the court he shall be in contempt.

HISTORY:
Codes, 1942, §§ 7076-05, 7076-08; Laws, 1956, ch. 304, §§ 5, 8; Laws, 1983, ch. 522, § 22; Laws, 1984, ch. 435, § 3, eff from and after July 1, 1984.

Joint Legislative Committee Note —
In 2009, a typographical error in the first paragraph was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting "...his commitment is in the best interest of the public's health..." for "...his commitment is to the best interest of the public's health..." The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

Cross References —
Power to punish for contempt, see § 9-1-17.
Sheriff's execution and return of process, see § 19-25-37.
Liability for cost of hospital care, see § 41-33-13.

§ 41-33-11. Discharge from hospital.

With the approval of the county health officer, the attending physician may discharge such person to home care under supervision of the county health officer in the county in which the patient expects to reside.

HISTORY:
Codes, 1942, § 7076-06; Laws, 1956, ch. 304, § 6; Laws, 1983, ch. 522, § 23, eff from and after July 1, 1983.

§ 41-33-13. Cost of hospital care.

Individuals committed under Section 41-33-9 shall be subject to the usual financial arrangement as to cost of care as is generally observed by that institution's management.

HISTORY:
Codes, 1942, § 7076-07; Laws, 1956, ch. 304, § 7; Laws, 1983, ch. 522, § 24, eff from and after July 1, 1983.

JUDICIAL DECISIONS

1. In general.
Where by statute the weekly charges permitted to be made to patients of a state tuberculosis sanitorium were limited to a stated maximum, the insurer under a health and accident policy which provided for the payment of certain hospital expense "actually incurred" was limited to the statutory maximum although the benefits provided by the policy were greater. Reserve Life Ins. Co. v. Coke, 254 Miss. 936, 183 So. 2d 490, 1966 Miss. LEXIS 1596 (Miss. 1966).

§ 41-33-15. Submission to medical examination.

When any county health officer has reasonable grounds to believe that any person has active tuberculosis, he shall formally request such person to submit to a medical examination.

In order to protect the health, safety, and welfare of the public, it shall be a misdemeanor for any person to refuse to submit to a medical examination when the county health officer has reasonable grounds to believe that such person has active tuberculosis, and upon conviction, such person shall be fined not more than Fifty Dollars ($50.00) or imprisoned not longer than thirty (30) days, or both.

HISTORY:
Codes, 1942, § 7076-08; Laws, 1956, ch. 304, § 8.

Cross References —
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§§ 41-33-17 through 41-33-39. Repealed.

Repealed by Laws, 1983, ch. 522, § 50, eff from and after July 1, 1983.

§ 41-33-17. [Codes, Hemingway's 1917, § 7915; 1930, § 4529; 1942, § 6870; Laws, 1916, ch. 109; Laws, 1971, ch. 312, § 1]

§ 41-33-19. [Codes, Hemingway's 1917, § 7916; 1930, § 4530; 1942, § 6871; Laws, 1916, ch. 109]

§ 41-33-21. [Codes, Hemingway's 1917, § 7917; 1930, § 4531; 1942, § 6872; Laws, 1916, ch. 109; Laws, 1924, ch. 302; Laws, 1934, ch. 381; Laws, 1966, ch. 451, § 1; Laws, 1971, ch. 312, § 2]

§ 41-33-23. [Codes, Hemingway's 1917, § 7921; 1930, § 4536; 1942, § 6877; Laws, 1916, ch. 109]

§ 41-33-25. [Codes, 1930, § 4532; 1942, § 6873; Laws, 1924, ch. 304]

§ 41-33-27. [Codes, 1930, § 4537; 1942, § 6878; Laws, 1924, ch. 308; Laws, 1928, Ex. Sess. ch. 67; Laws, 1964, ch. 427; Laws, 1971, ch. 312, § 3]

§ 41-33-29. [Codes, Hemingway's 1917, § 7918; 1930, § 4533; 1942, § 6874; Laws, 1916, ch. 109; Laws, 1918, ch. 176]

§ 41-33-31. [Codes, Hemingway's 1917, § 7919; 1930, § 4534; 1942, § 6875; Laws, 1916, ch. 109]

§ 41-33-33. [Codes, 1942, § 6880-01; Laws, 1946, ch. 252, §§ 1-5]

§ 41-33-35. [Codes, 1930, §§ 4538, 4539; 1942, §§ 6879, 6880; Laws, 1922, ch. 277]

§ 41-33-37. [Codes, 1942, § 6880-11; Laws, 1956, ch. 306]

§ 41-33-39. [Codes, Hemingway's 1917, §§ 4882-4884, 7920; 1930, §§ 4535, 4918-4920; 1942, §§ 6876, 7074-7076; Laws, 1910, ch. 130; Laws, 1916, ch. 109]

Editor's Notes —

Former § 41-33-17 continued the existence of the Tuberculosis Sanatorium of Mississippi.

Former § 41-33-19 authorized the state board of health to hire a superintendent and other personnel necessary for management of the Tuberculosis Sanatorium of Mississippi.

Former § 41-33-21 directed the board of health to establish the qualifications for admissions and the of cost of patient care.

Former § 41-33-23 authorized the board of health to accept gifts for benefit of the sanatorium.

Former § 41-33-25 authorized the state board of health to contract with local governments or other organizations for the treated of persons in the sanatorium.

Former § 41-33-27 authorized municipalities and counties to provide treatment for persons suffering from tuberculosis and other respiratory diseases.

Former § 41-33-29 established a bureau for tuberculosis.

Former § 41-33-31 directed the bureau to operate a correspondence school for advising patients.

Former § 41-33-33 provided for educational facilities and training for patients.

Former § 41-33-35 authorized the board of health to sell electric current from a certain tuberculosis sanatorium.

Former § 41-33-37 pertained to the disposition of obsolete equipment and personal property.

Former § 41-33-39 required physicians and others to file report of persons afflicted with tuberculosis, and other diseases.

CHAPTER 34.

HEALTH CARE PRACTICE REQUIREMENTS PERTAINING TO TRANSMISSION OF HEPATITIS B AND HIV

Sec.

41-34-1.	Definitions applicable to Sections 41-34-1 through 41-34-7.
41-34-3.	Licensing boards to establish practice requirements to protect public from transmission of Hepatitis B and HIV from health-care providers.
41-34-5.	Licensing boards to establish procedure for licensees and applicants for license to report status as carrier of Hepatitis B and HIV.
41-34-7.	Confidentiality of reports of Hepatitis B or HIV carrier status.

§ 41-34-1. Definitions applicable to Sections 41-34-1 through 41-34-7.

For the purposes of Sections 41-34-1 through 41-34-7 the following terms shall have the following meanings:

(a) "Health-care provider" shall mean a person licensed by this state to provide health care or professional services as a physician, podiatrist, registered nurse, licensed practical nurse, nurse practitioner, dentist, chiropractor or optometrist.

(b) "Board" means the State Board of Medical Licensure, State Board of Dental Examiners, the Mississippi Board of Nursing, the State Board of Chiropractic Examiners or the State Board of Optometry.

HISTORY:

Laws, 1992, ch. 381, § 1, eff from and after July 1, 1992.

Cross References —

State Board of Chiropractic Examiners, see §§ 73-6-3 et seq.

State Board of Dental Examiners, see §§ 73-9-1 et seq.

Mississippi Board of Nursing, see §§ 73-15-1 et seq.

State Board of Optometry, see §§ 73-19-1 et seq.

State Board of Medical Licensure, see §§ 73-43-1 et seq.

RESEARCH REFERENCES

ALR.

Medical, malpractice: who are "health care providers," or the like, whose actions fall within statutes specifically governing actions and damages for medical malpractice. 12 A.L.R.5th 1.

Am. Jur.

25 Am. Jur. Proof of Facts 3d 1, Sperm Bank Liability for Donor Semen Transmitted AIDS.

50 Am. Jur. Trials 1, Liability of Sperm Banks.

§ 41-34-3. Licensing boards to establish practice requirements to protect public from transmission of Hepatitis B and HIV from health-care providers.

Each board licensing health-care providers may establish by rule and regulation practice requirements based, in part, on applicable guidelines from the Federal Centers for Disease Control which will protect the public from the transmission of the Hepatitis B Virus and Human Immunodeficiency Virus in the practice of a profession regulated by the appropriate board.

HISTORY:
Laws, 1992, ch. 381, § 2, eff from and after July 1, 1992.

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. 2d, Health §§ 101, 102.
25 Am. Jur. Proof of Facts 3d 1, Sperm Bank Liability for Donor Semen Transmitted AIDS.
50 Am. Jur. Trials 1, Liability of Sperm Banks.

§ 41-34-5. Licensing boards to establish procedure for licensees and applicants for license to report status as carrier of Hepatitis B and HIV.

The boards may establish by rule and regulation requirements and procedures for a licensee and a licensure applicant to report his/her status as a carrier of the Hepatitis B Virus and Human Immunodeficiency Virus to the board and shall enforce such requirements and procedures.

HISTORY:
Laws, 1992, ch. 381, § 3, eff from and after July 1, 1992.

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. 2d, Health §§ 101, 102.
25 Am. Jur. Proof of Facts 3d 1, Sperm Bank Liability for Donor Semen Transmitted AIDS.
50 Am. Jur. Trials 1, Liability of Sperm Banks.

§ 41-34-7. Confidentiality of reports of Hepatitis B or HIV carrier status.

Each report of Hepatitis B Virus carrier status or Human Immunodeficiency Virus carrier status filed in compliance with this section and each record maintained and meetings held by the boards in the course of monitoring a licensee for compliance with the practice requirements established by this section, are confidential and exempt from the provisions of the Mississippi Public Records Law, Sections 25-61-1, et seq.

HISTORY:
Laws, 1992, ch. 381, § 4, eff from and after July 1, 1992.

RESEARCH REFERENCES

Am. Jur.
25 Am. Jur. Proof of Facts 3d 1, Sperm Bank Liability for Donor Semen Transmitted AIDS.
50 Am. Jur. Trials 1, Liability of Sperm Banks.

CHAPTER 35.

EYE INFLAMMATION OF YOUNG

Sec.
41-35-1. "Inflammation of the eyes of new born" defined.
41-35-3. Duty to make report as to any inflammation of the eyes of new born.
41-35-5. Duties of the local health officer.
41-35-7. Duties of the State Board of Health.
41-35-9. Duty of those in attendance at childbirth to use prophylactic in eyes of new born.
41-35-11. Violation of chapter constitutes a misdemeanor.

§ 41-35-1. "Inflammation of the eyes of new born" defined.

Any inflammation, swelling or redness in either or both eyes of any infant, either apart from or together with any unnatural discharge from the eye or eyes of any such infant, independent of the nature of the infection, if any occurring, any time within two (2) weeks after birth of such infant, shall be known as "inflammation of the eyes of the new born."

HISTORY:
Codes, Hemingway's 1917, § 4875; 1930, § 4911; 1942, § 7067; Laws, 1916, ch. 115.

§ 41-35-3. Duty to make report as to any inflammation of the eyes of new born.

It shall be the duty of any physician, surgeon, obstetrician, midwife, nurse, maternity home or hospital of any nature, parent, relative or other person attendant on or assisting in any way whatsoever, any infant, or the mother of any infant, at childbirth, or at any time within two (2) weeks after childbirth, knowing the condition defined in Section 41-35-1 to exist, within six (6) hours thereafter, to report such fact, as the state board of health shall direct, to the local health officer of the city, town, village, or whatever other political division there may be, within which the infant or the mother of the infant may reside.

HISTORY:
Codes, Hemingway's 1917, § 4876; 1930, § 4912; 1942, § 7068; Laws, 1916, ch. 115.

Cross References —
Practice of medicine, see § 73-25-33.

§ 41-35-5. Duties of the local health officer.

It shall be the duty of the local health officer: (1) to investigate or to have investigated each case of inflammation of the eyes of the new born as filed with him, in pursuance of the law, and any other such case as may come to his attention; (2) to report all cases of inflammation of the eyes of the new born and the result of all such investigations as the state board of health shall direct; (3) to conform to such other rules and regulations as the state board of health shall promulgate for his further guidance.

HISTORY:
Codes, Hemingway's 1917, § 4877; 1930, § 4913; 1942, § 7069; Laws, 1916, ch. 115.

Cross References —
County health officers and boards, see §§ 41-3-37, 41-3-43.
Municipal health boards, see § 41-3-57.

§ 41-35-7. Duties of the State Board of Health.

It shall be the duty of the State Board of Health: (1) To enforce the provisions of this chapter; (2) to promulgate such rules and regulations as shall, under this chapter, be necessary for the purpose under this chapter, and such as the State Board of Health may deem necessary for the further and proper guidance of local health officers, etc.; (3) to provide for the gratuitous distribution of a scientific prophylactic for inflammation of the eyes of the new born, together with proper directions for the use and administration thereof, to all physicians and midwives as may be engaged in the practice of obstetrics or assisting at childbirth; (4) to provide, if necessary, daily inspection and prompt and gratuitous treatment to any infant whose eyes are infected with inflammation of the eyes; the State Board of Health, if necessary, shall defray the expenses of such treatment from such sums as may be appropriated for its use; (5) to publish and promulgate such further advice and information concerning the dangers of inflammation of the eyes of the new born and the necessity for prompt and effective treatment; (6) to furnish copies of this chapter to all physicians and midwives as may be engaged in the practice of obstetrics or assisting at childbirth; (7) to keep a proper record of any and all such cases of inflammation of the eyes of the new born, as shall be filed in the office of the state board of health, in pursuance with this chapter, and as may come to its attention in any way, and to constitute such record a part of the annual report to the governor and legislature; (8) to report any and all violations of this chapter as may come to its attention, to the local police, county prosecutor, or district attorney in the county wherein such violation may have been committed, and to assist such official in every way possible, such as securing necessary evidence, etc.

HISTORY:
Codes, Hemingway's 1917, § 4878; 1930, § 4914; 1942, § 7070; Laws, 1916, ch. 115.

Cross References —
State board of health, see §§ 41-3 et seq.

§ 41-35-9. Duty of those in attendance at childbirth to use prophylactic in eyes of new born.

It shall be the duty of the physicians, midwives, or other persons in attendance upon a case of childbirth in a maternity home, hospital, public or charitable institution, in every infant immediately after birth, to use some prophylactic against inflammation of the eyes of the new born and to make record of the prophylactic used. It shall be the duty of such institution to maintain such records of cases of inflammation of the eyes of the new born as the state board of health shall direct.

It shall be the duty of a midwife in every case of childbirth under her care, immediately after birth, to use such prophylactic against inflammation of the eyes of the new born as the state board of health requires.

HISTORY:
Codes, Hemingway's 1917, §§ 4879, 4880; 1930, §§ 4915, 4916; 1942, §§ 7071, 7072; Laws, 1916, ch. 115.

RESEARCH REFERENCES

ALR.
Nurse's liability for her own negligence or malpractice. 51 A.L.R.2d 970.

§ 41-35-11. Violation of chapter constitutes a misdemeanor.

The failure of any person to comply with any of the provisions of this chapter shall constitute a misdemeanor. The offender shall, on conviction thereof, be fined for the first offense not to exceed Fifty Dollars $(50.00), for the second offense, not to exceed One Hundred Dollars ($100.00), and for the third offense and thereafter, not to exceed Two Hundred Dollars ($200.00) for each violation. It shall be the duty of the local police, county prosecutor, or the district attorney to prosecute for all misdemeanors as herein prescribed.

HISTORY:
Codes, Hemingway's 1917, § 4881; 1930, § 4917; 1942, § 7073; Laws, 1916, ch. 115.

Cross References —
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 36.

DETERMINATION OF DEATH

Sec.	
41-36-1.	Short title.
41-36-3.	Determination of death.

§ 41-36-1. Short title.

This chapter may be cited as the Uniform Determination of Death Law.

HISTORY:

Laws, 1981, ch. 410, § 1, eff from and after passage (approved March 24, 1981).

Cross References —

Contracts for donation of parts of human bodies, see § 41-39-9.

Comparable Laws from other States —

Arkansas Code Annotated, § 20-17-1010.

Georgia Code Annotated, § 31-10-16.

RESEARCH REFERENCES

Am. Jur.

22A Am. Jur. 2d, Dead Bodies § 28.

16 Am. Jur. Proof of Facts 2d, Time of Death, §§ 16 et seq. (proof of time of death).

CJS.

25A C.J.S., Death § 1.

§ 41-36-3. Determination of death.

An individual who has sustained either (a) irreversible cessation of circulatory and respiratory functions or (b) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards.

HISTORY:

Laws, 1981, ch. 410, § 2, eff from and after passage (approved March 24, 1981).

Comparable Laws from other States —

Arkansas Code Annotated, § 20-17-1010.

Georgia Code Annotated, § 31-10-16.

JUDICIAL DECISIONS

1. In general.

A jury issue as to whether the accused had sexually assaulted victim while in commission of murder was made by evidence showing that a puddle of liquid was found under the pelvic area of the partially unclad body, although testimony of witnesses showed that a shot was fired almost immediately after accused had forced his way into victim's apartment, and the pathologist testified that bullet had gone through victim's heart. West v. State, 485 So. 2d 681, 1985 Miss. LEXIS 2445 (Miss. 1985), cert. denied, 479 U.S. 983, 107 S. Ct. 570, 93 L. Ed. 2d 574, 1986 U.S. LEXIS 4897 (U.S. 1986).

RESEARCH REFERENCES

ALR.

Tests of death for organ transplant purposes. 76 A.L.R.3d 913.

Am. Jur.

22A Am. Jur. 2d, Dead Bodies § 28.

16 Am. Jur. Proof of Facts 2d, Time of Death, §§ 16 et seq. (proof of time of death).

CJS.

25A C.J.S., Death § 1.

CHAPTER 37.

AUTOPSIES

Sec.
41-37-1. "Autopsy" defined.
41-37-3. Purposes for which autopsy may be performed.
41-37-5. Who may perform autopsy.
41-37-7. Liability of physician performing autopsy.
41-37-9. Autopsy under court order; procedure.
41-37-11. Use of chemical analysis in criminal investigations.
41-37-13. Autopsy report.
41-37-15. Fees of physician and chemist.
41-37-17. Payment of disinterment expenses.
41-37-19. Admissibility of evidence obtained through autopsy in civil case.
41-37-21. Physician or chemist may be subpoenaed in criminal case.
41-37-23. Autopsy may be ordered on petition of certain health officials.
41-37-25. Autopsy may be performed when consent thereto is given.

§ 41-37-1. "Autopsy" defined.

The term "autopsy" as used in this chapter shall be construed to mean the scientific examination of the body of a deceased person, or any portion thereof, by acceptable scientific methods and the removal and retention of parts of the body to accomplish such an examination.

The term "autopsy" as used in this chapter shall not be construed to mean the scientific dissection of the whole body as practiced in medical schools in the instruction of anatomy to medical students.

HISTORY:
Codes, 1942, § 7158-01; Laws, 1960, ch. 258, §§ 1, 2, eff from and after passage (approved May 11, 1960).

RESEARCH REFERENCES

Am. Jur.
22A Am. Jur. 2d, Dead Bodies §§ 43, 45-48.
39 Am. Jur. Proof of Facts 2d 1, Cause of Death as Determined From Autopsy.

CJS.
25A C.J.S., Dead Bodies §§ 2-6, 40, 43, 56, 61, 65, 11-13, 16(3), 22-24(3).

§ 41-37-3. Purposes for which autopsy may be performed.

An autopsy may be performed, as provided by this chapter, for the purpose of determining the primary and/or contributing cause of death in the interest of public health and in criminal cases.

HISTORY:
Codes, 1942, § 7158-02; Laws, 1960, ch. 258, § 3, eff from and after passage (approved May 11, 1960).

RESEARCH REFERENCES

ALR.
Liability for performing an autopsy. 83 A.L.R.2d 955.

Am. Jur.
18 Am. Jur. 2d, Coroners or Medical Examiners § 12.

22A Am. Jur. 2d, Dead Bodies §§ 43, 45-48.
39 Am. Jur. Proof of Facts 2d 1, Cause of Death as Determined From Autopsy.
40 Am. Jur. Trials 501, Forensic Pathology in Homicide Cases.

CJS.
23 C.J.S., Criminal Law § 1353.
25A C.J.S., Dead Bodies §§ 2-29, 40, 43, 56, 61, 65.

§ 41-37-5. Who may perform autopsy.

Only a physician duly licensed by the Mississippi State Board of Health may perform an autopsy.

HISTORY:
Codes, 1942, § 7158-03; Laws, 1960, ch. 258, § 4, eff from and after passage (approved May 11, 1960).

Editor's Notes —
Authority to license and discipline physicians in Mississippi was transferred from the state board of health to the state board of medical licensure by Laws of 1980, ch. 458. See §§ 73-25-1 et seq. and §§ 73-43-1 et seq.

Cross References —
Physicians, generally, see §§ 73-25-1 et seq.

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. Proof of Facts 2d 1, Cause of Death as Determined From Autopsy.
40 Am. Jur. Trials 501, Forensic Pathology in Homicide Cases.

§ 41-37-7. Liability of physician performing autopsy.

A duly licensed physician authorized to perform an autopsy as provided in this chapter, and who, in good faith, complies with the provisions of this chapter in the performance of an autopsy, shall not be liable for damages on account thereof.

HISTORY:
Codes, 1942, § 7158-12; Laws, 1960, ch. 258, § 13, eff from and after passage (approved May 11, 1960).

RESEARCH REFERENCES

ALR.
Civil liability of undertaker for acts or omissions relating to corpse. 17 A.L.R.2d 770.
Immunity from liability for damages in tort of state or governmental unit or agency in operating hospital. 25 A.L.R.2d 203.
Civil liability in conjunction with autopsy. 97 A.L.R.5th 419.

Am. Jur.
22A Am. Jur. 2d, Dead Bodies § 49.
7 Am. Jur. Pl & Pr Forms (Rev), Coroners or Medical Examiners, Form 3 (complaint, petition, or declaration – against coroner – for unauthorized autopsy).
8 Am. Jur. Pl & Pr Forms (Rev), Dead Bodies, Form 31 (complaint, petition, or declaration – against hospital and physician – for unauthorized autopsy).
34 Am. Jur. Proof of Facts 2d 557, Adequacy of Consent to Autopsy.
39 Am. Jur. Proof of Facts 2d 1, Cause of Death as Determined From Autopsy.

CJS.
25A C.J.S., Dead Bodies §§ 30, 43, 45-49.

§ 41-37-9. Autopsy under court order; procedure.

A circuit judge, chancellor or county judge of the county or district where a person died or where the body of such deceased person may be or where the mortal stroke or other cause of death occurred, may, in his discretion, either in term time or in vacation, order an autopsy to be performed upon the body of such deceased person (1) upon the petition of a county prosecuting attorney of the county where the person died, or where the body of such deceased person may be at the time or where the mortal stroke or other cause of death occurred, or (2) upon petition of the district attorney of the district where the person died, or where the body of such deceased person may be at the time or where the mortal stroke or other cause of death occurred. In the event that said petition is filed by the county prosecuting attorney or district attorney, it shall contain allegations that the petitioner believes, has reason to believe, or suspects that such deceased person came to his death by some criminal means or agency, or that the cause of justice would be promoted by having an autopsy performed upon the body of such deceased person. Said petition shall be sworn to and shall be filed in the court of the judge or chancellor who makes the order, and shall be docketed by the clerk as are other cases or suits. If the body of such deceased person has already been interred, the petition shall so state, and if an autopsy is ordered, the order shall order the disinterment of such body for such autopsy and shall order any lawful officer of the county where said body may be buried to employ suitable help to disinter said body and to keep it in a suitable place until said autopsy shall have been performed. If there has been no interment of the body of such deceased person, a copy of the order ordering an autopsy upon said deceased shall be served by the sheriff of the county, or any other person authorized to serve process, upon any person who may be found in charge of any funeral home where said body may be, and such funeral home shall hold said body for autopsy. If the body of such deceased person be not found in any funeral home the sheriff of the county where it may be found shall take said body and keep it in a suitable place until said autopsy shall have been performed. If an autopsy is ordered as provided in this section, the petitioner shall immediately secure the services of a qualified person to perform such autopsy.

HISTORY:

Codes, 1942, § 7158-04; Laws, 1960, ch. 258, § 5, eff from and after passage (approved May 11, 1960).

Cross References —

Admissibility in civil case of evidence obtained through autopsy, see § 41-37-19.

Regulation of funeral establishments, see § 73-11-33 et seq.

JUDICIAL DECISIONS

1. In general.

The statute is directed at autopsies conducted by court order upon the petition of either a county prosecuting attorney or the district attorney. Evans v. State, 725 So. 2d 613, 1997 Miss. LEXIS 389 (Miss. 1997), cert. denied, 525 U.S. 1133, 119 S. Ct. 1097, 143 L. Ed. 2d 34, 1999 U.S. LEXIS 1510 (U.S. 1999).

The defendant in a murder prosecution lacked standing to challenge technical compliance with autopsy procedure and, therefore, the physician who conducted the autopsy of the victim was properly permitted to testify. Evans v. State, 725 So. 2d 613, 1997 Miss. LEXIS 389 (Miss. 1997), cert. denied, 525 U.S. 1133, 119 S. Ct. 1097, 143 L. Ed. 2d 34, 1999 U.S. LEXIS 1510 (U.S. 1999).

Although neither the county attorney nor the physician performing the autopsy complied with Code 1972, §§ 41-37-9, 41-37-23, or 41-37-

25, a chemist's testimony based upon the autopsy was admissible in plaintiff's civil action for wrongful death where neither the county attorney nor the performing physician was a party to the litigation, no evidence was adduced which tended to show malice or intentional wrongful actions by either the county attorney or the physician, no evidence was presented which even intimated that the defendants were in any way involved in procuring or performing the autopsy, and the analysis of the blood sample taken was the best evidence of the state of decedent's intoxication; in this situation, there would be no deterrent value in refusing to admit such crucial, probative, trustworthy proof. Hamilton v. Chaffin, 506 F.2d 904, 1975 U.S. App. LEXIS 16576 (5th Cir. Miss. 1975).

It was not the legislative intent and purpose for an accused in a criminal case to have the standing or the right to complain that all technicalities required by the statute had not been strictly followed in the ordering of an autopsy, and the fact that copies of the autopsy report had not been filed with the circuit clerk did not render the report inadmissible at the trial, for copies had previously been furnished to counsel for the defendant. Pendergraft v. State, 213 So. 2d 560, 1968 Miss. LEXIS 1293 (Miss. 1968), cert. denied, 394 U.S. 715, 89 S. Ct. 1453, 22 L. Ed. 2d 671, 1969 U.S. LEXIS 1875 (U.S. 1969).

OPINIONS OF THE ATTORNEY GENERAL

There is no statutory provision prohibiting the release of autopsy findings to a facility of the Department of Mental Health, in whose custody the patient died. 2004 Miss. Op. Att'y Gen. 161.

RESEARCH REFERENCES

ALR.

Civil liability of undertaker for acts or omissions relating to corpse. 17 A.L.R.2d 770.

Power of court to order disinterment and autopsy or examination for evidential purposes in civil case. 21 A.L.R.2d 538.

Immunity from liability for damages in tort of state or governmental unit or agency in operating hospital. 25 A.L.R.2d 203.

Civil liability in conjunction with autopsy. 97 A.L.R.5th 419.

Am. Jur.

18 Am. Jur. 2d, Coroners or Medical Examiners § 12.

22A Am. Jur. 2d, Dead Bodies §§ 43, 45-48.

5A Am. Jur. Legal Forms 2d, Coronors or Medical Examiners, § 73:13 (authorization or direction by prosecuting attorney to perform autopsy).

5A Am. Jur. Legal Forms 2d, Coroners or Medical Examiners, § 73:15 (demand for dead body).

7 Am. Jur. Pl & Pr Forms (Rev), Coroners or Medical Examiners, Forms 1 et seq.

39 Am. Jur. Proof of Facts 2d 1, Cause of Death as Determined From Autopsy.

CJS.

25A C.J.S., Dead Bodies §§ 27-29.

§ 41-37-11. Use of chemical analysis in criminal investigations.

The physician performing the autopsy in criminal investigations may obtain the services of a chemist competent to make a chemical analysis, or such services may be ordered by such judge or chancellor in term time or in vacation. The records of such chemical analysis shall be made a part of the autopsy report.

HISTORY:

Codes, 1942, § 7158-10; Laws, 1960, ch. 258, § 11, eff from and after passage (approved May 11, 1960).

Cross References —

Fee to be paid to a chemist for services performed pursuant to this section, see § 41-37-15.

RESEARCH REFERENCES

Am. Jur.

39 Am. Jur. Proof of Facts 2d 1, Cause of Death as Determined From Autopsy.

40 Am. Jur. Trials 501, Forensic Pathology in Homicide Cases.

§ 41-37-13. Autopsy report.

In all cases where an autopsy is performed as provided in Section 41-37-9, the person making said autopsy shall file a report, in duplicate, of said autopsy with the circuit clerk of the county where the death is being investigated. Such circuit clerk shall keep and preserve said report and make it available to the district attorney, county prosecuting attorney, grand jury, coroner, and to the accused.

HISTORY:

Codes, 1942, § 7158-05; Laws, 1960, ch. 258, § 6, eff from and after passage (approved May 11, 1960).

JUDICIAL DECISIONS

1. In general.

It was not the legislative intent and purpose for an accused in a criminal case to have the standing or the right to complain that all technicalities required by the statute had not been strictly followed in the ordering of an autopsy, and the fact that copies of the autopsy report had not been filed with the circuit clerk did not render the report inadmissible at the trial, for copies had previously been furnished to counsel for the defendant. Pendergraft v. State, 213 So. 2d 560, 1968 Miss. LEXIS 1293 (Miss. 1968), cert. denied, 394 U.S. 715, 89 S. Ct. 1453, 22 L. Ed. 2d 671, 1969 U.S. LEXIS 1875 (U.S. 1969).

RESEARCH REFERENCES

Am. Jur.

5A Am. Jur. Legal Forms 2d, Coroners § 73:18 (findings or report as to autopsy).

5A Am. Jur. Legal Forms 2d, Coroners § 73:19 (coroner's certificate of death).

39 Am. Jur. Proof of Facts 2d 1, Cause of Death as Determined From Autopsy.

2 Am. Jur. Trials 409, Locating Public Records.

§ 41-37-15. Fees of physician and chemist.

The physician performing the autopsy shall be paid a fee not exceeding the sum of Two Hundred Dollars ($200.00), which sum shall be paid out of the treasury of the county in the interest of which the autopsy was ordered, upon the allowance and warrant of the board of supervisors of such county. If the physician performing the autopsy is a qualified pathologist, such fee may be increased to Four Hundred Dollars ($400.00).

A chemist whose services are used pursuant to Section 41-37-11 may be paid a fee not to exceed Sixty Dollars ($60.00) for such chemical analysis. The fee of said chemist for such analysis shall be paid in like manner as that of the autopsy physician.

HISTORY:

Codes, 1942, §§ 7158-06, 7158-10; Laws, 1960, ch. 258, §§ 7, 11; Laws, 1970, ch. 412, § 2; Laws, 1983, ch. 509; Laws, 1985, ch. 416, eff from and after October 1, 1985.

RESEARCH REFERENCES

Am. Jur.
7 Am. Jur. Pl & Pr Forms (Rev), Coroners or Medical Examiners, Form 19 (certificate – by coroner – value of physician's services).

39 Am. Jur. Proof of Facts 2d 1, Cause of Death as Determined From Autopsy.

§ 41-37-17. Payment of disinterment expenses.

In cases where the disinterment of a body is ordered, the sheriff shall be reimbursed for all expenses incurred by him, which sum shall be paid out of the treasury of the county where the deceased came to his death, upon the allowance and warrant of the board of supervisors of such county. Said board of supervisors shall order payment of the same on the itemized claim of such sheriff.

HISTORY:
Codes, 1942, § 7158-07; Laws, 1960, ch. 258, § 8, eff from and after passage (approved May 11, 1960).

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. Proof of Facts 2d 1, Cause of Death as Determined From Autopsy.

§ 41-37-19. Admissibility of evidence obtained through autopsy in civil case.

No evidence obtained through any autopsy performed under the provisions of Section 41-37-9 shall be admitted over the objection of any party in the trial of any civil cause before a court or commission of this state.

HISTORY:
Codes, 1942, § 7158-04; Laws, 1960, ch. 258, § 5, eff from and after passage (approved May 11, 1960).

JUDICIAL DECISIONS

1. In general.
Although neither the county attorney nor the physician performing the autopsy complied with Code 1972, §§ 41-37-9, 41-37-23, or 41-37-25, a chemist's testimony based upon the autopsy was admissible in plaintiff's civil action for wrongful death where neither the county attorney nor the performing physician was a party to the litigation, no evidence was adduced which tended to show malice or intentional wrongful actions by either the county attorney or the physician, no evidence was presented which even intimated that the defendants were in any way involved in procuring or performing the autopsy, and the analysis of the blood sample taken was the best evidence of the state of decedent's intoxication; in this situation, there would be no deterrent value in refusing to admit such crucial, probative, trustworthy proof. Hamilton v. Chaffin, 506 F.2d 904, 1975 U.S. App. LEXIS 16576 (5th Cir. Miss. 1975).

RESEARCH REFERENCES

ALR.
Power of court to order disinterment and autopsy or examination for evidential purposes in civil case. 21 A.L.R.2d 538.

Am. Jur.
2 Am. Jur. Proof of Facts, Autopsy, Proof No. 1 (complete autopsy – death due to spinal concussion – testimony of physician (pathologist)).
4 Am. Jur. Proof of Facts, Death, Proof No. 1 (testimony of attending physician).
15 Am. Jur. Proof of Facts, Death Certification, § 12 (discrediting a death certificate).
39 Am. Jur. Proof of Facts 2d 1, Cause of Death as Determined From Autopsy.

§ 41-37-21. Physician or chemist may be subpoenaed in criminal case.

The physician performing the autopsy or the chemist performing such analysis in criminal investigations may be subpoenaed as a witness in any such criminal case. If subpoenaed as a prosecution witness, he shall be paid a fee of Fifty Dollars ($50.00) per day as an expert witness for each day while in attendance at the trial, and in addition thereto he shall be paid Seven Cents (7¢) per mile for travel from his home to the location of the trial and return. The fees herein provided for shall be paid to prosecution witnesses as otherwise provided for by law for the payment of such witness fees. If subpoenaed as a witness by the defense, such physician or chemist may collect a fee from the defendant not to exceed that prescribed hereunder for prosecution witnesses.

HISTORY:
Codes, 1942, § 7158-11; Laws, 1960, ch. 258, § 12, eff from and after passage (approved May 11, 1960).

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. Proof of Facts 2d 1, Cause of Death as Determined From Autopsy.
33 Am. Jur. Trials 467, Pathologist as Expert Witness: Malpractice Considerations.

§ 41-37-23. Autopsy may be ordered on petition of certain health officials.

The executive officer of the Mississippi State Board of Health or a county health officer may petition in like manner as is provided in Section 41-37-9 a circuit judge, chancellor, or county judge in any county in which a person dies or where the body of such deceased person may be, and such circuit judge, chancellor, or county judge may order an autopsy to be performed upon the body of such deceased person in the interest of public health and welfare in cases where the cause of death is not known and cannot be determined with reasonable certainty without an autopsy and when it would appear to such judge or chancellor by such petition and evidence in support thereof that death may have been due to communicable disease or contagious disease or to poison, foreign substance, radiation or for any other reason exact knowledge as to which would be of benefit to the public health and welfare. In such cases the same fees as specified in criminal investigations to the autopsy physician and chemist shall be allowed by the board of supervisors out of the general fund of the county in which such petition is filed, except that no fee shall be allowed and paid to any physician or chemist who is a regular salaried employee of the state or county. A copy of the report of the autopsy physician and chemist in such cases shall be filed with the clerk of the court in which such order was entered, with the county health officer of such county and with the executive officer of the state board of health.

HISTORY:

Codes, 1942, § 7158-09; Laws, 1960, ch. 258, § 10, eff from and after passage (approved May 11, 1960).

Cross References —

Communicable and infectious diseases, see §§ 41-23-1 et seq.

JUDICIAL DECISIONS

1. In general.

Although neither the county attorney nor the physician performing the autopsy complied with Code 1972, §§ 41-37-9, 41-37-23, or 41-37-25, a chemist's testimony based upon the autopsy was admissible in plaintiff's civil action for wrongful death where neither the county attorney nor the performing physician was a party to the litigation, no evidence was adduced which tended to show malice or intentional wrongful actions by either the county attorney or the physician, no evidence was presented which even intimated that the defendants were in any way involved in procuring or performing the autopsy, and the analysis of the blood sample taken was the best evidence of the state of decedent's intoxication; in this situation, there would be no deterrent value in refusing to admit such crucial, probative, trustworthy proof. Hamilton v. Chaffin, 506 F.2d 904, 1975 U.S. App. LEXIS 16576 (5th Cir. Miss. 1975).

OPINIONS OF THE ATTORNEY GENERAL

There is no statutory provision prohibiting the release of autopsy findings to a facility of the Department of Mental Health, in whose custody the patient died. 2004 Miss. Op. Att'y Gen. 161.

RESEARCH REFERENCES

Am. Jur.

18 Am. Jur. 2d, Coroners or Medical Examiners § 13.

22A Am. Jur. 2d, Dead Bodies §§ 43, 45-49.

39 Am. Jur. Proof of Facts 2d 1, Cause of Death as Determined From Autopsy.

CJS.

25A C.J.S., Dead Bodies §§ 2-6, 12, 16, 27-29, 40, 43, 56, 61, 65.

§ 41-37-25. Autopsy may be performed when consent thereto is given.

An autopsy may be performed without court order by a qualified physician when authorized by (a) the decedent, during his lifetime, or (b) any of the following persons who shall have assumed custody of the body for the purpose of burial: a surviving spouse, either parent or any person in loco parentis, a descendant over the age of eighteen years, a guardian, or the next of kin. In the absence of any of the foregoing persons any friend of the deceased who has assumed responsibility for burial, or any other person charged by law with responsibility for burial, may give such consent. If two or more persons have assumed custody of the body of an adult for purposes of burial, the consent of one such person shall be deemed sufficient.

In the case of a minor, however, the consent of either parent shall be deemed sufficient, unless the other parent gives written notice to the physician who is to perform the autopsy of such parent's objection thereto prior to the commencement of the autopsy. In the event that neither parent has legal custody of the minor, the guardian shall have the right to authorize an autopsy. The fees provided in this chapter for autopsies in criminal investigations shall not be applicable to this section.

No autopsy shall be held under this section over the objection of the surviving spouse, or if there be no surviving spouse, of any surviving parent, or if there be neither a surviving spouse nor parent, then of any surviving child.

HISTORY:

Codes, 1942, § 7158-08; Laws, 1960, ch. 258, § 9, eff from and after passage (approved May 11, 1960).

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in the last paragraph. The word "by" was changed to "be" so that "...if there by no surviving spouse..." will read "...if there be no surviving spouse...". The Joint Committee ratified the correction at its June 3, 2003, meeting.

JUDICIAL DECISIONS

1. In general.

Although neither the county attorney nor the physician performing the autopsy complied with Code 1972, §§ 41-37-9, 41-37-23, or 41-37-25, a chemist's testimony based upon the autopsy was admissible in plaintiff's civil action for wrongful death where neither the county attorney nor the performing physician was a party to the litigation, no evidence was adduced which tended to show malice or intentional wrongful actions by either the county attorney or the physician, no evidence was presented which even intimated that the defendants were in any way involved in procuring or performing the autopsy, and the analysis of the blood sample taken was the best evidence of the state of decedent's intoxication; in this situation, there would be no deterrent value in refusing to admit such crucial, probative, trustworthy proof. Hamilton v. Chaffin, 506 F.2d 904, 1975 U.S. App. LEXIS 16576 (5th Cir. Miss. 1975).

OPINIONS OF THE ATTORNEY GENERAL

There is no statutory provision prohibiting the release of autopsy findings to a facility of the Department of Mental Health, in whose custody the patient died. 2004 Miss. Op. Att'y Gen. 161.

RESEARCH REFERENCES

ALR.

Liability for wrongful autopsy. 18 A.L.R.4th 858.

Am. Jur.

22A Am. Jur. 2d, Dead Bodies §§ 43, 45-49.

5A Am. Jur. Legal Forms 2d, Coroners or Medical Examiners, § 73:5 (request to have autopsy performed – indemnification of authorized officer).

7 Am. Jur. Legal Forms 2d, Dead Bodies §§ 84:61 et seq. (autopsies and anatomical gifts).

8 Am. Jur. Pl & Pr Forms (Rev), Dead Bodies, Forms 33, 34 (complaint, petition, or declaration – against insurance company – procuring unauthorized autopsy).

34 Am. Jur. Proof of Facts 2d 557, Adequacy of Consent to Autopsy.

39 Am. Jur. Proof of Facts 2d 1, Cause of Death as Determined From Autopsy.

CJS.

25A C.J.S., Dead Bodies §§ 2, 10, 16-18-6, 12, 16, 27-30, 40, 43-45, 49, 56, 61, 65.

CHAPTER 39.

DISPOSITION OF HUMAN BODIES OR PARTS

In General. 41-39-1
The Anatomical Gift Law. [Repealed] 41-39-31
Revised Mississippi Uniform Anatomical Gift Act (UAGA). 41-39-101

IN GENERAL

Sec.	
41-39-1.	Disposition of tissue or external member of human body and dead fetus.
41-39-3.	Regulations for disposition of dead foetus acquired by hospital or midwife.
41-39-5.	Disposition of unclaimed dead bodies.
41-39-7.	Bodies of deceased hospital patients to be turned over to educational institutions in certain cases.
41-39-9.	Contracts for donation of parts of human bodies.
41-39-11.	Use of chemical analysis in criminal investigations.
41-39-13.	Tags on bodies of persons with infectious or communicable diseases.
41-39-15.	Repealed.

§ 41-39-1. Disposition of tissue or external member of human body and dead fetus.

Any physician removing or otherwise acquiring any tissue of the human body may, in his discretion, after making or causing to be made such scientific examination of the same as he may deem appropriate or as may be required by law, custom or rules and regulations of the hospital or other institution in which the tissue may have been removed or acquired, authorize disposition of the same by incineration, cremation, burial or other sanitary method approved by the state board of health, unless he shall have been furnished prior to removal or acquisition of the tissue, or at any time prior to its disposal, a written request that the same be delivered to the patient or someone in his behalf or, if death has occurred, to the person claiming the dead body for burial or cremation. No such tissue shall be delivered, however, except as may be permitted by rules and regulations of the state board of health. Any hospital or other institution acquiring possession of any such tissue, and not having written instructions to the contrary from the attending physician, the patient or the person claiming a dead body for burial or cremation, or someone in their behalf, may immediately dispose of the same as hereinabove provided.

However, no external member of the human body may be so disposed of within forty-eight hours of its removal or acquisition unless consent thereto be obtained in writing from the patient or the person authorizing the medical or surgical treatment of the patient, and no dead foetus shall be so disposed of within the same period of time unless consent thereto be obtained in writing from the mother of the dead foetus or her spouse. For the purposes of this section, an external member of the human body is defined as an arm or one or more joints thereof, a hand, a finger or one or more joints thereof, a leg or one or more joints thereof, a foot, a toe or one or more joints thereof, an ear or the greater part thereof, or the nose or the greater part thereof. For the purposes of this section and the succeeding section, a dead foetus is defined as a product of human conception, exclusive of its placenta or connective tissue, which has suffered death prior to its complete expulsion or extraction from the mother, as established by the fact that after such expulsion or extraction the foetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

HISTORY:

Codes, 1492, § 7068-01; Laws, 1964, ch. 436, § 1, eff from and after passage (approved May 4, 1964).

Cross References —

Requirement that tags be affixed to bodies of deceased persons with infectious or communicable diseases, see § 41-39-13.

RESEARCH REFERENCES

ALR.

Validity, construction, and application of statutes making it a criminal offense to mistreat or wrongfully dispose of dead body. 81 A.L.R.3d 1071.

Am. Jur.

7 Am. Jur. Legal Forms 2d, Dead Bodies § 84:71.1 (tissue donation).

§ 41-39-3. Regulations for disposition of dead foetus acquired by hospital or midwife.

The State Board of Health may provide by rules and regulations for the disposition of any dead foetus acquired by any hospital or by any midwife or person acting as a midwife, such disposition to be in a manner consistent with the provisions of Section 41-39-1 except that the waiting period for such disposition may be waived.

HISTORY:

Codes, 1942, § 7068-02; Laws, 1964, ch. 436, § 2; Laws, 1976, ch. 320, eff from and after passage (approved April 6, 1976).

RESEARCH REFERENCES

ALR.

Validity, construction, and application of statutes making it a criminal offense to mistreat or wrongfully dispose of dead body. 81 A.L.R.3d 1071.

§ 41-39-5. Disposition of unclaimed dead bodies.

Any physician, hospital, funeral director, embalmer, coroner or other person acquiring possession of a dead human body or portion thereof which is not claimed for burial or cremation within forty-eight (48) hours of its acquisition shall give written notice thereof to the board of supervisors, or a member thereof, of the county in which the dead body or portion thereof is located, furnishing such identification of the decedent as may be available. The board of supervisors or the coroner shall make reasonable efforts to notify members of the decedent's family or other known interested persons, and, if the dead body or portion thereof shall not be claimed for burial or cremation by any interested person within five (5) days of the aforementioned written notice, the board of supervisors or coroner shall, as soon as it may think appropriate, authorize and direct the burial or cremation and burial of the residue of such dead body or portion thereof. In its discretion and where otherwise permitted to do so by law, the board of supervisors may direct the disposition of the dead body or portion thereof as provided by Section 41-39-7. The reasonable expense of such burial or cremation and burial of the residue of a dead body shall be borne by the estate of the decedent or of any person liable at law for the necessities of the decedent during his lifetime or, if they are unable to pay the same, by the county of residence or settlement of the decedent, if known, and, if not known, by the county in which the dead body or portion thereof is located.

If the person having possession of such dead human body or portion thereof shall have no available means of preserving the same and shall so notify the board of supervisors, or a member thereof, of the county in which the dead body or portion thereof is located, it shall be the duty of the board of supervisors to make arrangements for the preservation of the same until burial or cremation and burial of the residue of the dead body as hereinabove provided, and the expense of such preservation shall be borne as hereinabove provided with respect to the expense of burial or cremation.

No county funds may be expended in excess of the amount budgeted for the purposes of this section without the prior approval of the board of supervisors of the county.

HISTORY:

Codes, 1942, § 7068-03; Laws, 1964, ch. 436, § 3; Laws, 2016, ch. 491, § 1, eff from and after July 1, 2016.

Cross References —

Donation of unclaimed body of executed prisoner, see § 99-19-55.

JUDICIAL DECISIONS

1. In general.

Miss. Code Ann. § 41-39-5 did not create a private cause of action because there was no legislative intent, express or implied, that would support a finding of an actionable duty; the Legislature did not intend to confer a private cause of action upon persons such as the deceased's siblings, and the supreme court would not impose liability. Tunica County v. Gray, 13 So. 3d 826, 2009 Miss. LEXIS 338 (Miss. 2009).

OPINIONS OF THE ATTORNEY GENERAL

Based on Section 41-39-5, if the county coroner has no available means of preserving a dead body until family members can make arrangements for a burial or cremation, the county board of supervisors has the duty to make arrangements for the preservation of such a body until family members may make such arrangements. 1996 Miss. Op. Att'y Gen. 586.

In a case where the coroner has determined that an autopsy is not necessary and the next of kin cannot be reached, the board of supervisors has the duty to make arrangements for the transportation and preservation of the body until family members may make arrangements, and any expenses incurred by the county would ultimately be the responsibility of decedent's estate or that person liable at law for the necessities of the decedent during his or her lifetime. 2003 Miss. Op. Att'y Gen. 727.

A board of supervisors has the authority to bury unclaimed bodies, identified paupers, and unknown strangers after an order has been spread on their official board minutes; however, these laws do not contemplate the county supplementing or reimbursing persons merely claiming to be or have been paupers solely to gain funeral assistance for the family. 2003 Miss. Op. Att'y Gen. 214.

RESEARCH REFERENCES

ALR.
Liability for injury or damages resulting from operation of vehicle in funeral procession or in procession which is claimed to have such legal status. 52 A.L.R.5th 155.

Am. Jur.
22A Am. Jur. 2d, Dead Bodies §§ 1, 5.

CJS.
25A C.J.S., Dead Bodies §§ 14, 15.

§ 41-39-7. Bodies of deceased hospital patients to be turned over to educational institutions in certain cases.

Upon the request of the Secretary of the State Board of Health, the authorities in charge of the hospitals supported either wholly or partly by state funds are authorized and directed to deliver any body of any person, except the bodies of persons with mental illness and persons with an intellectual disability, dying in any of those hospitals to the duly authorized representatives of the state university or any medical college or any accredited mortuary science program in any junior college in this state, giving the state university preference in the event there is an insufficiency in dissecting material for the use of all hospitals for anatomical purposes. This applies to the remains of any person, except persons with mental illness and persons with an intellectual disability, who dies in any of those hospitals, when the body is not, within a reasonable time after death, claimed for burial by some fraternal order, or by some person related to the deceased by blood or marriage, or by some friend. The State Board of Health shall have authority to adopt regulations for the proper burial of those persons with mental illness and persons with an intellectual disability. However, the human remains of any unknown person who is a traveler dying suddenly shall not be so delivered or used for anatomical purposes. Any human remains, so delivered, shall be properly and decently removed from the hospital, at the expense of the party to whom the same may be delivered, and shall be transported under such regulations as the State Board of Health may prescribe, and after use for strictly necessary medical study, in the medical department of the university, or in any medical college, or in any accredited mortuary science program in any junior college in this state, as the case may be, the body shall be decently interred or may be cremated and the residue interred at the expense of the party using the same. The State Board of Health shall have authority to regulate and restrict the use of dead bodies used for the above purposes. The authorities of the hospitals, the Secretary of the State Board of Health, and the authorities of the university, any medical college and any accredited mortuary science program in any junior college in this state, shall each cause a record to be kept of each body used and disposed of, under the provisions of this section, and such records shall be subject to inspection of any member of the State Board of Health at any time.

HISTORY:
Codes, Hemingway's 1917, § 7936; 1930, § 7203; 1942, § 6709; Laws, 1908, ch. 205; Laws, 1956, ch. 229; Laws, 1980, ch. 403, § 1; Laws, 1981, ch. 403, § 1; Laws, 2010, ch. 476, § 68, eff from and after passage (approved Apr.

1, 2010).

Cross References —
Uniform Determination of Death Law, see §§ 41-36-1 et seq.

Criminal offenses involving dead bodies, see §§ 97-29-19 through 97-29-23.

RESEARCH REFERENCES

Am. Jur.
22A Am. Jur. 2d, Dead Bodies §§ 41, 82.

CJS.
25A C.J.S., Dead Bodies §§ 16-18.

§ 41-39-9. Contracts for donation of parts of human bodies.

It is hereby declared lawful for any person eighteen (18) years of age and over, having a sound and disposing mind, to enter into a written contract with a qualified hospital or medical school to donate his eyes, heart, kidney or other transplantable part of a human body to medical science or for medical purposes. Any contract entered into under the terms of this section is hereby declared to be binding upon the surviving spouse or other heirs of the deceased who have the right under general law to claim his body.

Any person entering into such a contract may, during his or her lifetime, revoke by a written instrument, signed by both parties, said contract in its entirety. However, if any such person has received any monetary consideration for entering into said written contract, he or she upon revoking said contract shall repay such monetary consideration to those from whom he or she received the consideration, in full, plus six percent (6%) interest from the date of the signing of the contract.

HISTORY:
Codes, 1942, § 278.5; Laws, 1966, ch. 480, §§ 1, 2; Laws, 1976, ch. 406, § 1, eff from and after July 1, 1976.

RESEARCH REFERENCES

ALR.
Tests of death for organ transplant purposes. 76 A.L.R.3d 913.

Am. Jur.
22A Am. Jur. 2d, Dead Bodies §§ 86 et seq.

7 Am. Jur. Legal Forms 2d, Dead Bodies § 84:67 (pledge of eyes after death).

7 Am. Jur. Legal Forms 2d, Dead Bodies § 84:71.1 (tissue donation).

§ 41-39-11. Use of chemical analysis in criminal investigations.

(1) In respect to a gift of an eye as provided for in this chapter, a person licensed for the practice of funeral service under the provisions of Sections 73-11-41 et seq., who has successfully completed a course in eye enucleation and has received a certificate of competence from the state board of health, may enucleate eyes for such gift after the proper certification of death by a physician and compliance with the extent of such gift as defined within Sections 41-39-31 through 41-39-53. No such properly certified funeral service licensee acting in accordance with the terms of this chapter shall have any liability, civil or criminal, for such eye enucleation.

(2) The state board of health shall promulgate such rules as are necessary to provide for the proper certification of such funeral service licensees and for the implementation of this section.

HISTORY:

Laws, 1975, ch. 328, § 1; Laws, 1983, ch. 351, § 11, eff from and after July 1, 1984.

Editor's Notes —

Section 41-39-53, referred to in (1), was repealed by Laws of 2008, ch. 561, § 26, effective from and after July 1, 2008. For present similar provisions see the Revised Mississippi Uniform Anatomical Gift Act, §§ 41-39-101 et seq.

§ 41-39-13. Tags on bodies of persons with infectious or communicable diseases.

(1) For the purposes of this section, the term "infectious or communicable disease" means the following:

(a) Infectious hepatitis;

(b) Tuberculosis;

(c) Any venereal disease;

(d) Acquired immune deficiency syndrome (AIDS); or

(e) Any other disease designated by the State Board of Health in its rules and regulations as a disease transmissible through blood contact for which precautions are necessary in embalming or otherwise handling dead bodies infected with the disease or its causative agent.

(2) Upon the death of a person who has been diagnosed as having an infectious or communicable disease or its causative agent, in a hospital or other health-care facility, and in all other cases where there is an attending physician, the attending physician, or person in charge of the hospital or health-care facility, shall affix or cause to be affixed a tag on the body, preferably on the great toe. The tag shall be on card stock paper and shall be no smaller than five (5) centimeters by ten (10) centimeters. It shall be red in color and shall include the words "BLOOD/BODY FLUID PRECAUTIONS REQUIRED" in letters no smaller than six (6) millimeters in height. The name of the deceased person shall be written on the tag and the tag shall remain affixed to the body until the preparation of the body for burial has been completed.

(3) Upon the death of a person infected with the agent which causes an infectious or communicable disease, outside of a hospital or health-care facility or without an attending physician, any family member or person making arrangements for the disposition of the body who knows that the deceased was infected with such agent at the time of death shall advise the person taking charge of the body for disposition of this fact. The person taking charge of the body then shall affix or cause to be affixed a tag on the body as described in subsection (2) of this section.

(4)(a) Failure to comply with the requirements of this section shall constitute a misdemeanor and shall be punishable by a fine of not more than Five Hundred Dollars ($500.00) or by confinement in the county jail for not more than thirty (30) days, or both.

(b) The provisions of this subsection are cumulative and supplemental to any other provision of law, and a conviction or penalty imposed under this section shall not preclude any other action at law, proceedings for professional discipline or other criminal proceedings.

HISTORY:

Laws, 1987, ch. 378, eff from and after July 1, 1987.

Cross References —

Disposition of tissue or external member of decedent's body, see § 41-39-1.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

OPINIONS OF THE ATTORNEY GENERAL

Under Miss. Code Section 41-39-13, medical examiner should place "toe tag" on body only if he knows that deceased was infected with agent which causes infectious or communicable disease, and that he is under no obligation to attempt to identify presence of such agent for purpose of tagging body. 1993 Miss. Op. Att'y Gen. 838.

§ 41-39-15. Repealed.

Repealed by Laws, 2008, ch. 561, § 26, effective July 1, 2008.

§ 41-39-15. [Laws, 1987, ch. 433; Laws, 1988, ch. 355; Laws, 1993, ch. 423, § 1; Laws, 1998, ch. 540, § 1; Laws, 2005, ch. 472, § 2; Laws, 2007, ch. 450, § 1, eff from and after June 30, 2007.]

Editor's Notes —

Former § 41-39-15 was entitled: "Identification of potential organ and tissue donors; protocol; removal of organs for transplantation; notification of medical examiner if deceased patient is subject of medical-legal death investigation; performance improvement record reviews; out of state shipments; civil liability; gifts to medical schools; organ donation made by will, durable power of attorney, living will or under Anatomical Gift Law supersedes decision made by family of donor."

For present similar provisions, see §§ 41-39-101 et seq.

THE ANATOMICAL GIFT LAW [REPEALED]

Sec.

41-39-31 through 41-39-53. Repealed.

§§ 41-39-31 through 41-39-53. Repealed.

Repealed by Laws, 2008, ch. 561, § 26, effective July 1, 2008.

§ 41-39-31. [Codes, 1942, § 278.3-08; Laws, 1970, ch. 413, § 8, eff from and after passage (approved April 6, 1970).]

§ 41-39-33. [Codes, 1942, § 278.3-02; Laws, 1970, ch. 413, § 2; Laws, 1975, ch. 328, § 2; Laws, 1980, ch. 403, § 2, eff from and after July 1, 1980.]

§ 41-39-35. [Codes, 1942, § 278.3-01; Laws, 1970, ch. 413, § 1; Laws, 1976, ch. 406, § 2, eff from and after July 1, 1976.]

§ 41-39-37. [Codes, 1942, § 278.3-03; Laws, 1970, ch. 413, § 3; Laws, 1980, ch. 403, § 3, eff from and after July 1, 1980.]

§ 41-39-39. [Codes, 1942, § 278.3-04; Laws, 1970, ch. 413, § 4; Laws, 1975, ch. 328, § 3; Laws, 1980, ch. 403, § 4, eff from and after July 1, 1980.]

§ 41-39-41. [Codes, 1942, § 278.3-05; Laws, 1970, ch. 413, § 5, eff from and after passage (approved April 6, 1970).]

§ 41-39-43. [Codes, 1942, § 278.3-06; Laws, 1970, ch. 413, § 6, eff from and after passage (approved April 6, 1970).]

§ 41-39-45. [Codes, 1942, § 278.3-06; Laws, 1970, ch. 413, § 6, eff from and after passage (approved April 6, 1970).]

§ 41-39-47. [Codes, 1942, § 278.3-06; Laws, 1970, ch. 413, § 6, eff from and after passage (approved April 6, 1970).]

§ 41-39-49. [Codes, 1942, § 278.3-06; Laws, 1970, ch. 413, § 6, eff from and after passage (approved April 6, 1970).]

§ 41-39-51. [Codes, 1942, § 278.3-07; Laws, 1970, ch. 413, § 7, eff from and after passage (approved April 6, 1970).]

§ 41-39-53. [Laws, 1974, ch. 385, eff from and after passage (approved March 21, 1974); Laws, 1998, ch. 540, § 2, eff from and after May 1, 1998.]

Editor's Notes —

Former §§ 41-39-15 through 41-39-53 were entitled: "The Anatomical Gift Law."

For present similar provisions, see the Revised Mississippi Uniform Anatomical Gift Act, codified as §§ 41-39-101 et seq.

REVISED MISSISSIPPI UNIFORM ANATOMICAL GIFT ACT (UAGA)

Sec.

41-39-101. Short title.
41-39-103. Definitions.
41-39-105. Applicability.
41-39-107. Who may make anatomical gift before donor's death.
41-39-109. Manner of making anatomical gift before donor's death.
41-39-111. Amending or revoking anatomical gift before donor's death.
41-39-113. Refusal to make anatomical gift; effect of refusal.
41-39-115. Preclusive effect of anatomical gift, amendment, or revocation.
41-39-117. Who may make anatomical gift of decedent's body or part.
41-39-119. Manner of making, amending, or revoking anatomical gift of decedent's body or part.
41-39-121. Persons that may receive anatomical gift; purpose of anatomical gift.
41-39-123. Search and notification.
41-39-125. Delivery of document of gift not required; right to examine.
41-39-127. Rights and duties of procurement organization and others.
41-39-129. Coordination of procurement and use.
41-39-131. Sale or purchase of parts prohibited.
41-39-133. Other prohibited acts.
41-39-135. Immunity.
41-39-137. Law governing validity; choice of law as to execution of document of gift; presumption of validity.
41-39-139. Donor registry.
41-39-141. Effect of anatomical gift on advance health-care directive.
41-39-143. Notification of medical examiner if deceased patient is subject of medical-legal death investigation.
41-39-145. Uniformity of application and construction.
41-39-147. Relation to electronic signatures in global and national commerce act.
41-39-149. Repealed.

§ 41-39-101. Short title.

Sections 41-39-101 through 41-39-149 may be cited as the Revised Mississippi Uniform Anatomical Gift Act (UAGA).

HISTORY:

Laws, 2008, ch. 561, § 1; reenacted without change, Laws, 2012, ch. 346, § 1; reenacted without change, Laws, 2014, ch. 315, § 1, eff from and after July 1, 2014.

Editor's Notes —

Section 41-39-149 referred to in the first paragraph was repealed by Laws, ch. 315, § 25, effective July 1, 2014.

Comparable Laws from other States —

Alabama Code Annotated, §§ 22-19-160 et seq.

Arkansas Code Annotated §§ 20-17-1201 et seq.

Florida Annotated Statutes §§ 765.510 et seq.

Official Code of Georgia Annotated, §§ 765.510 et seq.

Louisiana Revised Statutes, §§ 17:2351 et seq.

North Carolina General Statutes, §§ 130A-412.3 et seq.

South Carolina Code Annotated, §§ 44-43-310 et seq.

Tennessee Code Annotated, §§ 68-30-101 et seq.

Virginia Code Annotated, §§ 32.1-291.1 et seq.

§ 41-39-103. Definitions.

In Sections 41-39-101 through 41-39-149:

(1) "Adult" means an individual who is at least eighteen (18) years of age.

(2) "Agent" means an individual:

(A) Authorized to make health care decisions on the principal's behalf by a power of attorney for health care; or

(B) Expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.

(3) "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education.

(4) "Decedent" means a deceased individual whose body or part is or may be the source of an anatomical gift. The term includes a stillborn infant and, subject to restrictions imposed by law other than Sections 41-39-101 through 41-39-149, a fetus.

(5) "Disinterested witness" means a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift, or another adult who exhibited special care and concern for the individual. The term does not include a person to which an anatomical gift could pass under Section 41-39-121.

(6) "Document of gift" means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver's license, identification card, or donor registry.

(7) "Donor" means an individual whose body or part is the subject of an anatomical gift.

(8) "Donor registry" means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.

(9) "Driver's license" means a license or permit issued by the Mississippi Department of Public Safety to operate a vehicle, whether or not conditions are attached to the license or permit.

(10) "Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

(11) "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem.

(12) "Hospital" means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

(13) "Identification card" means an identification card issued by the Mississippi Department of Public Safety.

(14) "Know" means to have actual knowledge.

(15) "Minor" means an individual who is under eighteen (18) years of age.

(16) "Organ procurement organization" means a person designated by the Secretary of the United States Department of Health and Human Services as an organ procurement organization.

(17) "Parent" means a parent whose parental rights have not been terminated.

(18) "Part" means an organ, an eye, or tissue of a human being. The term does not include the whole body.

(19) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(20) "Physician" means an individual authorized to practice medicine or osteopathy under the law of any state.

(21) "Procurement organization" means an eye bank, organ procurement organization, or tissue bank.

(22) "Prospective donor" means an individual who is dead or near death, Glasgow Coma Scale of five (5) or less, and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. The term does not include an individual who has made a refusal.

(23) "Reasonably available" means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

(24) "Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted.

(25) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(26) "Refusal" means a record created under Section 41-39-113 that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part.

(27) "Sign" means, with the present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound, or process.

(28) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(29) "Technician" means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an enucleator.

(30) "Tissue" means a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is donated for the purpose of research or education.

(31) "Tissue bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

(32) "Transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

HISTORY:

Laws, 2008, ch. 561, § 2; reenacted without change, Laws, 2012, ch. 346, § 2; reenacted without change, Laws, 2014, ch. 315, § 2, eff from and after July 1, 2014.

Editor's Notes —

Section 41-39-149 referred to in the first paragraph was repealed by Laws, ch. 315, § 25, effective July 1, 2014.

§ 41-39-105. Applicability.

Sections 41-39-101 through 41-39-149 apply to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

HISTORY:

Laws, 2008, ch. 561, § 3; reenacted without change, Laws, 2012, ch. 346, § 3; reenacted without change, Laws, 2014, ch. 315, § 3, eff from and after July 1, 2014.

Editor's Notes —

Section 41-39-149 referred to in the first paragraph was repealed by Laws, ch. 315, § 25, effective July 1, 2014.

§ 41-39-107. Who may make anatomical gift before donor's death.

Subject to Section 41-39-115, an anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in Section 41-39-109 by:

(1) The donor, if the donor is an adult or if the donor is a minor and is:

(A) Emancipated; or

(B) Authorized under state law to apply for a driver's license because the donor is at least eighteen (18) years of age;

(2) An agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;

(3) A parent of the donor, if the donor is an unemancipated minor; or

(4) The donor's guardian.

HISTORY:

Laws, 2008, ch. 561, § 4; reenacted without change, Laws, 2012, ch. 346, § 4; reenacted without change, Laws, 2014, ch. 315, § 4, eff from and after July 1, 2014.

§ 41-39-109. Manner of making anatomical gift before donor's death.

(a) A donor may make an anatomical gift:

(1) By authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card;

(2) In a will;

(3) During a terminal illness or injury of the donor, by any form of communication addressed to at least two (2) adults, at least one (1) of whom is a disinterested witness; or

(4) As provided in subsection (b).

(b) A donor or other person authorized to make an anatomical gift under Section 41-39-107 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must:

(1) Be witnessed by at least two (2) adults, at least one (1) of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2) State that it has been signed and witnessed as provided in paragraph (1).

(c) Revocation, suspension, expiration, or cancellation of a driver's license or identification card upon which an anatomical gift is indicated does not invalidate the gift.

(d) An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

HISTORY:

Laws, 2008, ch. 561, § 5; reenacted without change, Laws, 2012, ch. 346, § 5; reenacted without change, Laws, 2014, ch. 315, § 5, eff from and after July 1, 2014.

§ 41-39-111. Amending or revoking anatomical gift before donor's death.

(a) Subject to Section 41-39-115, a donor or other person authorized to make an anatomical gift under Section 41-39-107 may amend or revoke an anatomical gift by:

(1) A record signed by:

(A) The donor;

(B) The other person; or

(C) Subject to subsection (b), another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or

(2) A later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(b) A record signed pursuant to subsection (a)(1)(C) must:

(1) Be witnessed by at least two (2) adults, at least one (1) of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2) State that it has been signed and witnessed as provided in paragraph (1).

(c) Subject to Section 41-39-115, a donor or other person authorized to make an anatomical gift under Section 41-39-107 may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

(d) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two (2) adults, at least one (1) of whom is a disinterested witness.

(e) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection (a).

HISTORY:

Laws, 2008, ch. 561, § 6 reenacted without change, Laws, 2012, ch. 346, § 6; reenacted without change, Laws, 2014, ch. 315, § 6, eff from and after July 1, 2014.

§ 41-39-113. Refusal to make anatomical gift; effect of refusal.

(a) An individual may refuse to make an anatomical gift of the individual's body or part by:

(1) A record signed by:

(A) The individual; or

(B) Subject to subsection (b), another individual acting at the direction of the individual if the individual is physically unable to sign;

(2) The individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or

(3) Any form of communication made by the individual during the

individual's terminal illness or injury addressed to at least two (2) adults, at least one (1) of whom is a disinterested witness.

(b) A record signed pursuant to subsection (a)(1)(B) must:

(1) Be witnessed by at least two (2) adults, at least one (1) of whom is a disinterested witness, who have signed at the request of the individual; and

(2) State that it has been signed and witnessed as provided in paragraph (1).

(c) An individual who has made a refusal may amend or revoke the refusal:

(1) In the manner provided in subsection (a) for making a refusal;

(2) By subsequently making an anatomical gift pursuant to Section 41-39-109 that is inconsistent with the refusal; or

(3) By destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(d) Except as otherwise provided in Section 41-39-115(h), in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

HISTORY:

Laws, 2008, ch. 561, § 7; reenacted without change, Laws, 2012, ch. 346, § 7; reenacted without change, Laws, 2014, ch. 315, § 7, eff from and after July 1, 2014.

§ 41-39-115. Preclusive effect of anatomical gift, amendment, or revocation.

(a) Except as otherwise provided in subsection (g) and subject to subsection (f), in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under Section 41-39-109 or an amendment to an anatomical gift of the donor's body or part under Section 41-39-111.

(b) A donor's revocation of an anatomical gift of the donor's body or part under Section 41-39-111 is not a refusal and does not bar another person specified in Section 41-39-107 or 41-39-117 from making an anatomical gift of the donor's body or part under Section 41-39-109 or 41-39-119.

(c) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under Section 41-39-109 or an amendment to an anatomical gift of the donor's body or part under Section 41-39-111, another person may not make, amend, or revoke the gift of the donor's body or part under Section 41-39-119.

(d) A revocation of an anatomical gift of a donor's body or part under Section 41-39-111 by a person other than the donor does not bar another person from making an anatomical gift of the body or part under Section 41-39-109 or 41-39-119.

(e) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under Section 41-39-107, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

(f) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under Section 41-39-107, an anatomical gift of a part for one or more of the purposes set forth in Section 41-39-107 is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under Section 41-39-109 or 41-39-119.

(g) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

(h) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

HISTORY:

Laws, 2008, ch. 561, § 8; reenacted without change, Laws, 2012, ch. 346, § 8; reenacted without change, Laws, 2014, ch. 315, § 8, eff from and after July 1, 2014.

§ 41-39-117. Who may make anatomical gift of decedent's body or part.

(a) Subject to subsections (b) and (c) and unless barred by Section 41-39-113 or 41-39-115, an anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

(1) An agent of the decedent at the time of death who could have made an anatomical gift under Section 41-39-107(2) immediately before the decedent's death;

(2) The spouse of the decedent;

(3) Adult children of the decedent;

(4) Parents of the decedent;

(5) Adult siblings of the decedent;

(6) Adult grandchildren of the decedent;

(7) Grandparents of the decedent;

(8) An adult who exhibited special care and concern for the decedent;

(9) The persons who were acting as the guardians of the person of the decedent at the time of death; and

(10) Any other person having the authority to dispose of the decedent's body.

(b) If there is more than one (1) member of a class listed in subsection (a) (1), (3), (4), (5), (6), (7), or (9) entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under Section 41-39-121 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(c) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (a) is reasonably available to make or to object to the making of an anatomical gift.

HISTORY:
Laws, 2008, ch. 561, § 9; reenacted without change, Laws, 2012, ch. 346, § 9; reenacted without change, Laws, 2014, ch. 315, § 9, eff from and after July 1, 2014.

§ 41-39-119. Manner of making, amending, or revoking anatomical gift of decedent's body or part.

(a) A person authorized to make an anatomical gift under Section 41-39-117 may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(b) Subject to subsection (c), an anatomical gift by a person authorized under Section 41-39-117 may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one (1) member of the prior class is reasonably available, the gift made by a person authorized under Section 41-39-117 may be:

(1) Amended only if a majority of the reasonably available members agree to the amending of the gift; or

(2) Revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

(c) A revocation under subsection (b) is effective only if, before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.

HISTORY:
Laws, 2008, ch. 561, § 10 reenacted without change, Laws, 2012, ch. 346, § 10; reenacted without change, Laws, 2014, ch. 315, § 10, eff from and after July 1, 2014.

§ 41-39-121. Persons that may receive anatomical gift; purpose of anatomical gift.

(a) An anatomical gift may be made to the following persons named in the document of gift:

(1) A hospital; accredited medical school, dental school, college, or university; organ procurement organization; or other appropriate person, for research or education;

(2) Subject to subsection (b), an individual designated by the person making the anatomical gift if the individual is the recipient of the part; or

(3) An eye bank or tissue bank.

(b) If an anatomical gift to an individual under subsection (a)(2) cannot be transplanted into the individual, the part passes in accordance with subsection (g) in the absence of an express, contrary indication by the person making the anatomical gift.

(c) If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection (a) but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(1) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.

(2) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.

(3) If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(4) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

(d) For the purpose of subsection (c), if there is more than one (1) purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift must be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(e) If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in subsection (a) and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (g).

(f) If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor," "organ donor," or "body donor," or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (g).

(g) For purposes of subsections (b), (e), and (f) the following rules apply:

(1) If the part is an eye, the gift passes to the appropriate eye bank.

(2) If the part is tissue, the gift passes to the appropriate tissue bank.

(3) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(h) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subsection (a) (2), passes to the organ procurement organization as custodian of the organ.

(i) If an anatomical gift does not pass pursuant to subsections (a) through (h) or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

(j) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under Section 41-39-109 or 41-39-119 or if the person knows that the decedent made a refusal under Section 41-39-113 that was not revoked. For purposes of the subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(k) Except as otherwise provided in subsection (a) (2), nothing in Sections 41-39-101 through 41-39-149 affects the allocation of organs for transplantation or therapy.

HISTORY:

Laws, 2008, ch. 561, § 11; reenacted without change, Laws, 2012, ch. 346, § 11; reenacted without change, Laws, 2014, ch. 315, § 11, eff from and after July 1, 2014.

Editor's Notes —

Section 41-39-149 referred to in the first paragraph was repealed by Laws, ch. 315, § 25, effective July 1, 2014.

§ 41-39-123. Search and notification.

(a) The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

(1) A law enforcement officer, fire fighter, paramedic, or other emergency rescuer finding the individual; and

(2) If no other source of the information is immediately available, a hospital, as soon as practical after the individual's arrival at the hospital.

(b) If a document of gift or a refusal to make an anatomical gift is located by the search required by subsection (a) (1) and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.

(c) A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section but may be subject to administrative sanctions.

HISTORY:

Laws, 2008, ch. 561, § 12; reenacted without change, Laws, 2012, ch. 346, § 12; reenacted without change, Laws, 2014, ch. 315, § 12, eff from and after July 1, 2014.

§ 41-39-125. Delivery of document of gift not required; right to examine.

(a) A document of gift need not be delivered during the donor's lifetime to be effective.

(b) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under Section 41-39-121.

HISTORY:

Laws, 2008, ch. 561, § 13; reenacted without change, Laws, 2012, ch. 346, § 13; reenacted without change, Laws, 2014, ch. 315, § 13, eff from and after July 1, 2014.

§ 41-39-127. Rights and duties of procurement organization and others.

(a) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Mississippi Department of Public Safety and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(b) A procurement organization must be allowed reasonable access to information in the records of the Mississippi Department of Public Safety to ascertain whether an individual at or near death is a donor.

(c) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. The organ procurement organizations, tissue bank, or eye bank, or hospital medical professionals under the direction thereof, may perform any and all tests to evaluate the deceased as a potential donor and any invasive procedures on the deceased body in order to preserve the potential donor's organs. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent. The procurement organization representative shall initiate the consent process with reasonable discretion and sensitivity to the family's circumstances, values and beliefs.

(d) Unless prohibited by law other than Sections 41-39-101 through 41-39-149, at any time after a donor's death, the person to which a part passes under Section 41-39-121 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(e) Unless prohibited by law other than Sections 41-39-101 through 41-39-149, an examination under subsection (c) or (d) may include an examination of all medical and dental records of the donor or prospective donor.

(f) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(g) Upon referral by a hospital under subsection (a), a procurement organization shall make a reasonable search for any person listed in Section 41-39-117 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(h) Subject to Sections 41-39-121(i) and 41-39-143, the rights of the person to which a part passes under Section 41-39-121 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and Sections 41-39-101 through 41-39-149, a person that accepts an anatomical gift of an entire body may allow embalming, burial or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under Section 41-39-121, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

(i) Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.

(j) A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

HISTORY:

Laws, 2008, ch. 561, § 14; reenacted without change, Laws, 2012, ch. 346, § 14; reenacted without change, Laws, 2014, ch. 315, § 14, eff from and after July 1, 2014.

§ 41-39-129. Coordination of procurement and use.

Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

HISTORY:

Laws, 2008, ch. 561, § 15; reenacted without change, Laws, 2012, ch. 346, § 15; reenacted without change, Laws, 2014, ch. 315, § 15, eff from and after July 1, 2014.

§ 41-39-131. Sale or purchase of parts prohibited.

(a) Except as otherwise provided in subsection (b), a person that, for valuable consideration, knowingly purchases or sells a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death commits a felony and upon conviction is subject to a fine not exceeding Fifty Thousand Dollars ($50,000.00) or imprisonment not exceeding five (5) years, or both.

(b) A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

HISTORY:

Laws, 2008, ch. 561, § 16; reenacted without change, Laws, 2012, ch. 346, § 16; reenacted without change, Laws, 2014, ch. 315, § 16, eff from and after July 1, 2014.

Cross References —

Imposition and collection of separate laboratory analysis fee in addition to any other assessments and costs imposed by statute on every individual convicted of a felony in a case where Crime Laboratory provided forensic science or laboratory services in connection with the case, see § 45-1-29.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

§ 41-39-133. Other prohibited acts.

A person that, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal commits a felony and upon conviction is subject to a fine not exceeding Fifty Thousand Dollars ($50,000.00) or imprisonment not exceeding five (5) years, or both.

HISTORY:

Laws, 2008, ch. 561, § 17; reenacted without change, Laws, 2012, ch. 346, § 17; reenacted without change, Laws, 2014, ch. 315, § 17, eff from and after July 1, 2014.

Cross References —

Imposition and collection of separate laboratory analysis fee in addition to any other assessments and costs imposed by statute on every individual convicted of a felony in a case where Crime Laboratory provided forensic science or laboratory services in connection with the case, see § 45-1-29.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

§ 41-39-135. Immunity.

(a) Any person who, in good faith and acting in reliance upon and authorization made under the provisions of Sections 41-39-101 through 41-39-149 and without notice of revocation thereof, takes possession of, performs surgical operations upon, removes tissue, substances or parts from the human body, or refuses such a gift, and any person who unknowingly fails to carry out the wishes of the donor according to the provisions of Sections 41-39-101 through 41-39-149 shall not be liable for damages in a civil action brought against him for that act.

(b) Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

(c) In determining whether an anatomical gift has been made, amended, or revoked under Sections 41-39-101 through 41-39-149, a person may rely upon representations of an individual listed in Section 41-39-117(a) (2), (3), (4), (5), (6), (7), or (8) relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

HISTORY:

Laws, 2008, ch. 561, § 18; reenacted without change, Laws, 2012, ch. 346, § 18; reenacted without change, Laws, 2014, ch. 315, § 18, eff from and after July 1, 2014.

Editor's Notes —

Section 41-39-149 referred to in (a) was repealed by Laws, ch. 315, § 25, effective July 1, 2014.

§ 41-39-137. Law governing validity; choice of law as to execution of document of gift; presumption of validity.

(a) A document of gift is valid if executed in accordance with:

(1) Sections 41-39-101 through 41-39-149;

(2) The laws of the state or country where it was executed; or

(3) The laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.

(b) If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.

(c) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

HISTORY:

Laws, 2008, ch. 561, § 19; reenacted without change, Laws, 2012, ch. 346, § 19; reenacted without change, Laws, 2014, ch. 315, § 19, eff from and after July 1, 2014.

Editor's Notes —

Section 41-39-149 referred to in (a)(1), was repealed by Laws, ch. 315, § 25, effective July 1, 2014.

§ 41-39-139. Donor registry.

(a) The Mississippi Department of Public Safety may establish or contract for the establishment of a donor registry.

(b) The Mississippi Department of Public Safety shall cooperate with a person that administers any donor registry that this state establishes, contracts for, or recognizes for the purpose of transferring to the donor registry all relevant information regarding a donor's making, amendment to, or revocation of an anatomical gift.

(c) A donor registry must:

(1) Allow a donor or other person authorized under Section 41-39-107 to include on the donor registry a statement or symbol that the donor has made, amended, or revoked an anatomical gift;

(2) Be accessible to a procurement organization to allow it to obtain relevant information on the donor registry to determine, at or near death of the donor or a prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift; and

(3) Be accessible for purposes of paragraphs (1) and (2) seven (7) days a week on a twenty-four-hour basis.

(d) Except as otherwise provided in subsection (f), personally identifiable information on a donor registry about a donor or prospective donor may not be used or disclosed without the express consent of the donor, prospective donor, or person that made the anatomical gift for any purpose other than to determine, at or near death of the donor or prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift.

(e) This section does not prohibit any person from creating or maintaining a donor registry that is not established by or under contract with the state. Any such registry must comply with subsections (c) and (d).

(f) At the time that a person is renewing his or her driver's license, the Department of Public Safety shall ask the person if he or she would like to be a donor. If the answer is yes, the department shall inform the prospective donor that his or her decision to be a donor cannot be revoked, changed or contested after his or her death by the donor's next of kin or by any other person, and shall ask the person if he or she desires information about the person's decision to be a donor to be sent to another person or persons. If the answer is yes, the department shall obtain the name and mailing address of the person or persons designated by the prospective donor, and the donor registry shall send the information about the prospective donor's decision to the designated person or persons as requested.

HISTORY:

Laws, 2008, ch. 561, § 20; reenacted without change, Laws, 2012, ch. 346, § 20; reenacted without change, Laws, 2014, ch. 315, § 20, eff from and after July 1, 2014.

§ 41-39-141. Effect of anatomical gift on advance health-care directive.

(a) In this section:

(1) "Advance health care directive" means a power of attorney for health care or a record signed or authorized by a prospective donor containing the prospective donor's direction concerning a health care decision for the prospective donor.

(2) "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.

(3) "Health care decision" means any decision regarding the health care of the prospective donor.

(b) If a prospective donor has a declaration or advance health care directive and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor's attending physician and prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive, or, if none or the agent is not reasonably available, another person authorized by law other than Sections 41-39-101 through 41-39-149 to make health care decisions on behalf of the prospective donor, shall act for the donor to resolve the conflict. The conflict must be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under Section 41-39-117. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part may not be withheld or withdrawn from the prospective donor if withholding or withdrawing the measures is not contraindicated by appropriate end-of-life care.

HISTORY:

Laws, 2008, ch. 561, § 21, reenacted without change, Laws, 2012, ch. 346, § 21; reenacted without change, Laws, 2014, ch. 315, § 21, eff from and after July 1, 2014.

Editor's Notes —

Section 41-39-149 referred to in (b), was repealed by Laws, ch. 315, § 25, effective July 1, 2014.

§ 41-39-143. Notification of medical examiner if deceased patient is subject of medical-legal death investigation.

(a) If the deceased patient is medically suitable to be an organ and/or tissue donor, as determined by the procurement organization, and the donor and/or family has authorized the donation and transplantation, the donor's organs and/or tissues shall be removed for the purpose of donation and transplantation by the organ procurement organization, in accordance with subsection (b) of this section.

(b) If the deceased patient is the subject of a medical-legal death investigation, the procurement organization shall immediately notify the appropriate medical examiner that the deceased patient is medically suitable to be an organ and/or tissue donor. If the medical examiner determines that examination, analysis or autopsy of the organs and/or tissue is necessary for the medical examiner's investigation, the medical examiner may be present while the organs and/or tissues are removed for the purpose of transplantation. The physician, surgeon or technician removing the organs and/or tissues shall file with the medical examiner a report detailing the donation, which shall become part of the medical examiner's report. When requested by the medical examiner, the report shall include a biopsy or medically approved sample, as specified by the medical examiner, from the donated organs and/or tissues.

(c) In a medical-legal death investigation, decisions about organ and/or tissue donation and transplantation shall be made in accordance with a protocol established and agreed upon by majority vote of procurement organization, a certified state pathologist who shall be appointed by the Mississippi Commissioner of Public Safety, a representative from the University of Mississippi Medical Center, a representative from the Mississippi Coroners Association, an organ recipient who shall be appointed by the Governor, the Director of the Mississippi Bureau of Investigation of the Mississippi Department of Public Safety, and a representative of the Mississippi Prosecutor's Association appointed by the Attorney General. The protocol shall be established so as to maximize the total number of organs and/or tissues available for donation and transplantation. Organs and/or tissues designated by virtue of this protocol shall be recovered. The protocol shall be reviewed and evaluated on an annual basis.

HISTORY:

Laws, 2008, ch. 561, § 22; reenacted without change, Laws, 2012, ch. 346, § 22; reenacted without change, Laws, 2014, ch. 315, § 22, eff from and after July 1, 2014.

§ 41-39-145. Uniformity of application and construction.

In applying and construing Sections 41-39-101 through 41-39-149, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

HISTORY:

Laws, 2008, ch. 561, § 23; reenacted without change, Laws, 2012, ch. 346, § 23; reenacted without change, Laws, 2014, ch. 315, § 23, eff from and after July 1, 2014.

Editor's Notes —

Section 41-39-149 referred to in the section was repealed by Laws, ch. 315, § 25, effective July 1, 2014.

§ 41-39-147. Relation to electronic signatures in global and national commerce act.

Sections 41-39-101 through 41-39-149 modify, limit, and supersede the

Electronic Signatures in Global and National Commerce Act, 15 USCS Section 7001 et seq., but do not modify, limit or supersede Section 101(a) of that act, 15 USCS Section 7001, or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 USCS Section 7003(b).

HISTORY:

Laws, 2008, ch. 561, § 24; reenacted without change, Laws, 2012, ch. 346, § 24; reenacted without change, Laws, 2014, ch. 315, § 24, eff from and after July 1, 2014.

Editor's Notes —

Section 41-39-149 referred to in the section was repealed by Laws, ch. 315, § 25, effective July 1, 2014.

§ 41-39-149. Repealed.

Repealed by Laws of 2014, ch. 315, § 25, effective July 1, 2014.

§ 41-39-149. [Laws, 2008, ch. 561, § 25; Laws, 2012, ch. 346, § 25, eff from and after July 1, 2012.]

Editor's Notes —

Former § 41-39-149 provided for the repeal of the revised Mississippi Uniform Anatomical Gift Act, codified as §§ 41-39-101 through 41-39-147.

CHAPTER 41.

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§ 41-41-1. Blood banking and transfusion procedures constitute services rather than sales; maximum usable life span of blood.

The procurement, processing, storage, distribution and/or use of whole blood, plasma, blood products and blood derivatives, human tissue, organs or bones for the purpose of injecting, transfusing, transplanting or transferring the same or any of them into the human body for all purposes whatsoever constitutes the rendering of a service by every person participating therein, whether or not any remuneration is paid therefor, and does not constitute a sale. The maximum usable life span or shelf life for human blood preserved in citrate phosphate dextrose shall be governed by federal regulations promulgated and adopted by the Food and Drug Administration.

HISTORY:

Codes, 1942, § 7129-71; Laws, 1966, ch. 475, § 1; Laws, 1975, ch. 334; Laws, 1980, ch. 382; Laws, 1987, ch. 401, eff from and after July 1, 1987.

Cross References —

Definitions applicable to chapter, see § 41-41-203.

JUDICIAL DECISIONS

1. Products liability.

Legislature intended to exempt every person participating in the procurement, processing, storage, distribution, and/or use of whole blood, plasma, blood products and blood derivatives, human tissue, organs or bones for the purpose of injecting, transfusing, transplanting or transferring the same or any of them into the human body from liability under the theory of strict products liability; the Mississippi Products Liability Act does not intend to change that long-standing concept. Palermo v. Lifelink Found., Inc., 152 So. 3d 1099, 2014 Miss. LEXIS 578 (Miss. 2014).

Trial court did not err by granting a manufacturer's motion for summary judgment on a patient's claim under the Mississippi Products Liability Act (MPLA) because the manufacturer was statutorily defined as a service provider; the statute explicitly provides that those involved in the processing of human tissues are not selling anything but providing a service, and thus, they are not "sellers" under the MPLA. Palermo v. Lifelink Found., Inc., 152 So. 3d 1099, 2014 Miss. LEXIS 578 (Miss. 2014).

Patient was barred from bringing a strict-products-liability claim or products-liability claim against a non-profit tissue bank, which supplied an allograft for the patient's surgery, because human tissue, pursuant to Miss. Code Ann. § 41-41-1, was not a product under the Mississippi Products Liability Act, Miss. Code Ann. § 11-1-63. Palermo v. LifeLink Found., Inc., 152 So. 3d 1177, 2014 Miss. App. LEXIS 14 (Miss. Ct. App.), aff'd, 152 So. 3d 1099, 2014 Miss. LEXIS 578 (Miss. 2014).

RESEARCH REFERENCES

ALR.

Liability of hospital, physician, or other individual medical practitioner for injury or death resulting from blood transfusion. 20 A.L.R.4th 136.

Liability of blood supplier or donor for injury or death resulting from blood transfusion. 24 A.L.R.4th 508.

Discovery of identity of blood donor. 56 A.L.R.4th 755.

Products liability: what is an "unavoidably unsafe" product. 70 A.L.R.4th 16.

Validity, construction, and application of blood shield statutes. 75 A.L.R.5th 229.

Am. Jur.

40A Am. Jur. 2d, Hospitals and Asylums § 35.

37 Am. Jur. Proof of Facts 2d 1, Hepatitis from Blood Transfusion.

2 Am Law Prod Liab 3d, Implied Warranties § 20:3.

3 Am Law Prod Liab 3d, Services § 37:24.

6 Am Law Prod Liab 3d, Health and Medical Appliances, Equipment, and Supplies § 91:6.

§ 41-41-3. Consent for surgical or medical treatment or procedures on unemancipated minors.

(1) It is hereby recognized and established that, in addition to such other persons as may be so authorized and empowered, any one (1) of the following persons who is reasonably available, in descending order of priority, is authorized and empowered to consent on behalf of an unemancipated minor, either orally or otherwise, to any surgical or medical treatment or procedures not prohibited by law which may be suggested, recommended, prescribed or directed by a duly licensed physician:

(a) The minor's guardian or custodian.

(b) The minor's parent.

(c) An adult brother or sister of the minor.

(d) The minor's grandparent.

(2) If none of the individuals eligible to act under subsection (1) is reasonably available, an adult who has exhibited special care and concern for the minor and who is reasonably available may act; the adult shall communicate the assumption of authority as promptly as practicable to the individuals specified in subsection (1) who can be readily contacted.

(3) Any female, regardless of age or marital status, is empowered to give consent for herself in connection with pregnancy or childbirth.

HISTORY:

Codes, 1942, § 7129-81; Laws, 1966, ch. 478, § 1; Laws, 1984, ch. 347; Laws, 1998, ch. 542, § 17, eff from and after July 1, 1998.

Editor's Notes —

Laws of 1998, ch. 542, § 16, provides:

"SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Consent by grandmother.
3. Insufficient reason for custody change.

1. In general.

Only a child or his or her guardian may make a claim based on the violation of a child's medical privileges. Alexander v. State, 811 So. 2d 272, 2001 Miss. App. LEXIS 3 (Miss. Ct. App. 2001).

No physician may perform any procedure on a patient no matter how slight or well intentioned without that patient's informed consent, and violation of this rule constitutes a battery. Fox v. Smith, 594 So. 2d 596, 1992 Miss. LEXIS 48 (Miss. 1992).

The informed consent rule applicable to medical practitioners reflects Mississippi's "respect for the individual's right to be free from unwanted bodily intrusions no matter how well intentioned," which is rooted in the right to privacy recognized by state common law and Article 3, § 32 of the Mississippi constitution. Fox v. Smith, 594 So. 2d 596, 1992 Miss. LEXIS 48 (Miss. 1992).

In order to recover on the issue of informed consent, the patient must show that the doctor failed to disclose sufficient information about the proposed operation or procedure to form basis for informed consent, and there must be a causal connection between the breach of the duty by the doctor and the injuries to the patient. Latham v. Hayes, 495 So. 2d 453, 1986 Miss. LEXIS 2653 (Miss. 1986).

Information necessary for patient to reach an informed consent must include known risks of a procedure or operation, which would be material to a prudent patient in determining whether or not to undergo suggested treatment. Latham v. Hayes, 495 So. 2d 453, 1986 Miss. LEXIS 2653 (Miss. 1986).

In a medical malpractice action, plaintiffs could not prevail under the doctrine of informed consent in absence of showing, by expert testimony or otherwise, what standard of care the physician was held to when inserting IUDs and explaining the risks involved. Marshall v. Clinic for Women, P.A., 490 So. 2d 861, 1986 Miss. LEXIS 2501 (Miss. 1986).

A physician is under a duty in some circumstances to warn his patient of the known risks of proposed treatment or surgery, so that the patient will be in a position to make an intelligent decision as to whether he will submit to such treatment or surgery. Cole v. Wiggins, 487 So. 2d 203, 1986 Miss. LEXIS 2432 (Miss. 1986).

2. Consent by grandmother.

In a prosecution for various sex offenses committed on a six-year-old girl, the court rejected the defendant's claim that all of the expert testimony put on by the state should have been disregarded because the child's grandmother had no right to consent to the child's medical treatment since the mother was absent in accordance with the statute when the decision was made to take the child to see a doctor. Alexander v. State, 811 So. 2d 272, 2001 Miss. App. LEXIS 3 (Miss. Ct. App. 2001).

3. Insufficient reason for custody change.

Judge's actions, involving the issuance of an ex parte temporary change of child custody order, not only constituted willful misconduct in violation of the state constitution and various canons of the code of judicial conduct, but also violated state laws and rules; the order did not conform to Miss. Code Ann. § 43-21-301(4), a need for emergency medical care was insufficient reason to award temporary custody in light of Miss. Code Ann. § 41-41-3(1)(b), and the order was not mailed to all parties as required by Miss. Code Ann. § 43-21-111(5). Miss. Comm'n on Judicial Performance v. Perdue, 853 So. 2d 85, 2003 Miss. LEXIS 373 (Miss. 2003).

RESEARCH REFERENCES

ALR.

Infant's liability for medical, dental, or hospital services. 53 A.L.R.4th 1249.

Medical practitioner's liability for treatment given child without parent's consent. 67 A.L.R.4th 511.

Nonconsensual treatment of involuntarily committed mentally ill persons with neuroleptic or antipsychotic drugs as violative of state constitutional guaranty. 74 A.L.R.4th 1099.

Power of court or other public agency to order medical treatment over parental religious objections for child whose life is not immediately endangered. 21 A.L.R.5th 248.

Malpractice: Physician's liability for injury or death resulting from side effects of drugs intentionally administered to or prescribed for patient. 47 A.L.R.5th 433.

Am. Jur.

61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 157 et seq., 180.

9B Am. Jur. Legal Forms 2d, Infants §§ 144:12, 144:13 (consent by infant to diagnosis or treatment – drug abuse, venereal disease).

15 Am. Jur. Legal Forms 2d, Physicians and Surgeons §§ 202:110 et seq. (consent to treatment).

13 Am. Jur. Pl & Pr Forms (Rev), Guardian and Ward, Forms 295 (petition or application – for authorization to proceed with kidney transplant – ward as donor); 296 (petition or application – for authorization for involuntary sterilization of female adult incompetent ward).

35 Am. Jur. Trials 637, Trial Report: Informed Consent to Brain Surgery.

CJS.

70 C.J.S., Physicians and Surgeons § 46.

Law Reviews.

Flowers, Medical malpractice – informed consent gone awry. 8 Miss. C. L. Rev. 65, Fall, 1987.

Vitiello, Death With Dignity in Mississippi? An Analysis of Mississippi's Natural Death Act. 54 Miss L. J. 459, Sept.-Dec., 1984.

§ 41-41-5. Repealed.

Repealed by Laws, 1998, ch. 542, § 18, eff from and after July 1, 1998. [Codes, 1942, § 7129-82; Laws, 1966, ch. 478, § 2]

Editor's Notes —

Former § 41-41-5 related to relationships included within the consent provisions of Sections 41-41-3 through 41-41-11 and to persons relying in good faith on representations by persons purporting to give consent.

§ 41-41-7. Implied consent to medical treatment where emergency exists.

In addition to any other instances in which a consent is excused or implied at law, a consent to surgical or medical treatment or procedures, suggested, recommended, prescribed or directed by a duly licensed physician, will be implied where an emergency exists if there has been no protest or refusal of consent by a person authorized and empowered to consent or, if so, there has been a subsequent change in the condition of the person affected that is material and morbid, and there is no one immediately available who is authorized, empowered, willing and capacitated to consent. For the purposes hereof, an emergency is defined as a situation wherein, in competent medical judgment, the proposed surgical or medical treatment or procedures are immediately or imminently necessary and any delay occasioned by an attempt to obtain a consent would reasonably jeopardize the life, health or limb of the person affected, or would reasonably result in disfigurement or impairment of faculties.

HISTORY:
Codes, 1942, § 7129-83; Laws, 1966, ch. 478, § 3, eff from and after passage (approved May 25, 1966).

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Jury instruction.

1. In general.
Miss. Code Ann. § 41-41-7 states that consent will be implied in emergency situations in addition to any other instances in which a consent is excused or implied at law; thus, in Mississippi, consent to a medical procedure may be implied when a patient is fully informed of the known risks that would be material to a prudent patient in determining whether to undergo the proposed treatment. Accordingly, for consent, no emergency need exist as long as the patient is informed that the procedure is a known risk of the proposed treatment. Griffin v. McKenney, 877 So. 2d 425, 2003 Miss. App. LEXIS 942 (Miss. Ct. App. 2003), cert. denied, 878 So. 2d 67, 2004 Miss. LEXIS 867 (Miss. 2004).

2. Jury instruction.
Defendant's informed consent instruction in a medical malpractice case did not misstate the law, and it was supported by the evidence. Griffin v. McKenney, 877 So. 2d 425, 2003 Miss. App. LEXIS 942 (Miss. Ct. App. 2003), cert. denied, 878 So. 2d 67, 2004 Miss. LEXIS 867 (Miss. 2004).

RESEARCH REFERENCES

ALR.
Hospital's liability as to diagnosis and care of patients brought to emergency ward. 72 A.L.R.2d 396.
Liability for injury or death allegedly caused by activities of hospital "rescue team". 64 A.L.R.4th 1200.
Medical practitioner's liability for treatment given child without parent's consent. 67 A.L.R.4th 511.
Construction and application of "Good Samaritan" statutes. 68 A.L.R.4th 294.

Law Reviews.
Flowers, Medical malpractice – informed consent gone awry. 8 Miss. C. L. Rev. 65, Fall, 1987.

§ 41-41-9. Court may consent to or order medical treatment; allocation of treatment expenses.

In addition to all other remedies available at law or in equity, any court having a clerk or any judge thereof may, in either term time or vacation, upon presentation of the written advice or certificate of one or more duly licensed physicians that there is an immediate or imminent necessity for medical or surgical treatment or procedures for an adult of unsound mind or a minor, summarily consent to or order and direct such surgical or medical treatment or procedures for the adult of unsound mind or minor, provided that:

(a)(i) The surrogate for such adult of unsound mind or minor has refused or declined to do so and there is no other person known to be immediately available who is so authorized, empowered, willing or capacitated to so consent; or

(ii) There is no person available to be designated as a surrogate; and

(b) There has been filed with or there is presented to such court or judge an application for a writ of habeas corpus as to such person, a pleading respecting the custody or care of such person, an application for appointment of a guardian or conservator for such person, a pleading seeking the adjudication of such person as a non compos mentis, drug addict, habitual drunkard or neglected child, or some other instrument or pleading otherwise invoking the aid or jurisdiction of said court or judge or the state, as parens patriae or otherwise, concerning the welfare of such person. Any subsequent dismissal, nonsuit, removal, transfer, overruling or denial of such original application, instrument or pleading, or denial of jurisdiction of the court or judge over the subject matter or necessary parties, shall not retroactively revoke, rescind or invalidate any prior consent.

The reasonable expense of an adult of unsound mind or a minor in thus obtaining such surgical or medical treatment or procedures shall be borne by his estate or any person liable at law for his necessities or, if they are unable to pay, by the county of residence or settlement of the person receiving such surgical or medical care.

Upon request of the attending physician or other interested person, it shall be the duty of any district attorney or county attorney to give his assistance in the presentation of any such medical advice or certificate and in obtaining the consent or order of a judge or court of proper jurisdiction.

HISTORY:
Laws, 1999, ch. 425, § 2, eff from and after passage (approved Mar. 18, 1999.).

Editor's Notes —
A prior § 41-41-9 [Laws, 1966, ch. 478, § 4] was repealed by Laws, 1998, ch. 542, § 18, eff from and after July 1, 1998. That section provided for court orders or judicial consent concerning medical treatments and procedures.

§ 41-41-11. Waiver of medical privilege.

Any person authorized and empowered to consent to surgical or medical treatment or procedures for himself or another may also waive the medical privilege for himself or the other person and consent to the disclosure of medical information and the making and delivery of copies of medical or hospital records. Any such waiver or consent shall survive the death of the person giving the same. No such waiver shall be needed for the cooperation with the furnishing of information to the State Department of Health, its representatives or employees in the discharge of their official duties. However, the State Department of Health shall not reveal the name of a patient with his case history without having first been authorized to do so by the patient, his personal representative, or legal heirs in case there be no personal representative.

HISTORY:
Codes, 1942, § 7129-85; Laws, 1966, ch. 478, § 5; Laws, 1968, ch. 441, § 6; Laws, 1988, ch. 557, § 5, eff from and after July 1, 1988.

Cross References —
Privileged communications, see § 13-1-21.

OPINIONS OF THE ATTORNEY GENERAL

Generally, most medical records in a mental commitment file in the office of the Chancery Clerk will fall under one or more of the exemptions to the Public Records Act; exempt records should not be released or kept open to the public absent a court order or authorized consent. 2002 Miss. Op. Att'y Gen. 543.

RESEARCH REFERENCES

ALR.

Waiver of evidentiary privilege by inadvertent disclosure – state law. 51 A.L.R.5th 603.

Am. Jur.

9B Am. Jur. Legal Forms 2d, Hospitals and Asylums §§ 136:103 et seq. (relationship with patient – refusal of treatment).

45 Am. Jur. Proof of Facts 2d 595, Protected Communication Between Physician and Patient.

46 Am. Jur. Proof of Facts 2d 373, Existence of Physician and Patient Relationship.

47 Am. Jur. Proof of Facts 2d 721, Psychotherapist and Patient Privilege.

32 Am. Jur. Trials 105, Unauthorized Disclosure of Confidential Patient Information.

§ 41-41-13. Physician or nurse practitioner treating minor for venereal disease need not obtain parental consent.

Any physician, duly licensed to practice medicine in the State of Mississippi, or any nurse practitioner, who, in the exercise of due care, renders medical care to a minor for treatment of a venereal disease is under no obligation to obtain the consent of a parent or guardian, as applicable, or to inform such parent or guardian of such treatment.

HISTORY:

Codes, 1942, § 8893.7; Laws, 1971, ch. 307, § 1; Laws, 1995, ch. 344, § 4, eff from and after July 1, 1995.

Cross References —

Venereal disease regulations, see §§ 41-23-27, 41-23-29 and 41-23-30.

RESEARCH REFERENCES

ALR.

Malpractice: questions of consent in connection with treatment of genital or urinary organs. 89 A.L.R.3d 32.

§ 41-41-14. Physician treating minor for mental or emotional problems resulting from alcohol or drugs need not obtain parental consent.

(1) Any physician or psychologist duly licensed to practice medicine or psychology in the State of Mississippi, who in the exercise of due care consults with or prescribes medication for a minor at least fifteen (15) years of age for mental or emotional problems caused by or related to alcohol or drugs is under no obligation to obtain the consent of the spouse, parent or guardian of said minor, but said minor may consent to such treatment the same as if the minor had reached the age of majority.

(2) The licensed physician or psychologist may, but shall not be obligated to, inform the spouse, parent or guardian of a minor in the circumstances enumerated as to the treatment given or needed and the information may be

given to the spouse, parent or guardian without the consent of the minor patient and over the express refusal of the minor patient.

(3) The parent, spouse or guardian shall not be financially liable for any such consultation unless and until they have consented to the same.

HISTORY:

Laws, 1979, ch. 480, eff from and after July 1, 1979.

§ 41-41-15. Donations of blood by minors.

(1) The legal disabilities of any minor aged sixteen (16) years or older are removed for purposes of voluntarily donating blood, with or without remuneration therefor, to a licensed hospital, blood bank, community blood program, or other lawful activity engaged in processing and supplying human blood for transfusions and/or related medical purposes, as provided in this section.

(2) Any person who is sixteen (16) years of age or older may consent to the donation of his or her blood and to the penetration of such tissue necessary to accomplish the donation, if the person obtains written permission from the person's parent or guardian. The consent shall not be subject to deferments because of the minority of the person.

(3) Any person who is seventeen (17) years of age or older may consent to the donation of his or her blood and to the penetration of such tissue necessary to accomplish the donation. The consent shall not be subject to deferments because of the minority of the person, and parental authorization shall not be required to authorize the donation and penetration of tissue.

HISTORY:

Codes, 1942, §§ 278.3-11, 278.3-12; Laws, 1972, ch. 333, § 1; ch. 362, § 1; Laws, 1976, ch. 386; Laws, 2009, ch. 551, § 1, eff from and after July 1, 2009.

RESEARCH REFERENCES

ALR.

Liability for injury or death from blood transfusion. 45 A.L.R.3d 1364.

§ 41-41-16. Health-care providers conducting tests for infectious diseases without consent of patient.

A hospital or physician, and employees of such hospital or physician, may conduct an acquired immune deficiency syndrome (AIDS)/human immunodeficiency virus (HIV) antibody test or appropriate tests for any other infectious diseases without specific consent for such tests if the hospital or physician determines that the test is necessary for diagnostic purposes to provide appropriate care or treatment to the person to be tested, or in order to protect the health and safety of other patients or persons providing care and treatment to the person to be tested. The person who is to be tested shall be informed of the nature of the test which is to be conducted.

HISTORY:

Laws, 1991, ch. 455, § 1, eff from and after passage (approved March 29, 1991).

RESEARCH REFERENCES

ALR.

Validity and Propriety under Circumstances, of Court-Ordered HIV Testing. 87 A.L.R.5th 631.

Damage action for HIV testing without consent of person tested. 77 A.L.R.5th 541.

§ 41-41-17. Authorized consent to participate in research conducted in accordance with federal law.

(1) Any adult, as defined in Section 41-41-203(a), Mississippi Code of 1972, or emancipated minor, as defined in Section 41-41-203(e), Mississippi Code of 1972, may consent to participate as a subject in research if that research is conducted in accordance with federal law (Title 45 CFR Part 46: Protection of Human Subjects).

(2) Unemancipated minors may participate as subjects in research, if that research is conducted in accordance with federal law (Title 45 CFR Part 46: Protection of Human Subjects).

HISTORY:

Laws, 2004, ch. 339, § 1, eff from and after July 1, 2004; Laws, 2018, ch. 317, § 1, eff from and after July 1, 2018.

Amendment Notes —

The 2018 amendment substituted "(Title 45 CFR Part 46: Protection of Human Subjects)" for "with the consent of a parent or a guardian, as defined in Section 41-41-203(f), Mississippi Code of 1972" in (2).

PERFORMANCE OF ABORTION; CONSENT

Sec.	
41-41-31.	Definitions.
41-41-33.	Consent; written certification.
41-41-34.	Performance of fetal ultrasound imaging and auscultation of fetal heart tone services required before abortion; patient to be offered opportunity to view ultrasound image and hear heartbeat; patient to sign certification form acknowledging being given that opportunity; physician to retain copy of signed certification form.
41-41-35.	Duties of State Department of Health; printed materials.
41-41-37.	Physician to inform woman of medical emergency.
41-41-39.	Violation of provisions as misdemeanor.
41-41-45.	Abortion prohibited; exceptions.

§ 41-41-31. Definitions.

The following words and phrases shall have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Abortion" means the use or prescription of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth or to remove a dead fetus.

(b) "Medical emergency" means that condition which, on the basis of the physician's best clinical judgment, so complicates a pregnancy as to necessitate an immediate abortion to avert the death of the mother or for which a twenty-four-hour delay will create grave peril of immediate and irreversible loss of major bodily function.

(c) "Probable gestational age of the unborn child" means what, in the judgment of the attending physician, will with reasonable probability be the gestational age of the unborn child at the time the abortion is planned to be performed.

HISTORY:

Laws, 1991, ch. 439, § 1, eff from and after July 1, 1991 (Governor's veto overridden by the Legislature on March 28, 1991).

Cross References —

Performance of abortions upon minors, see §§ 41-41-51 et seq.

Uniform health care decisions act applicability, see § 41-41-227.

JUDICIAL DECISIONS

1. In general.

Racketeer Influenced and Corrupt Organizations (RICO) Act does not require proof that either racketeering enterprise or predicate acts of racketeering were motivated by economic purpose, therefore if abortion protesters (anti-abortion groups, individuals, and coalition of anti-abortion groups) had conspired nationwide to shut down abortion clinics through pattern of racketeering activity, including extortion, use of threatened or actual force, violence or fear, to injury of business and property interests of clinics, then clinics could maintain RICO action against protesters for violating Act. NOW v. Scheidler, 510 U.S. 249, 114 S. Ct. 798, 127 L. Ed. 2d 99, 1994 U.S. LEXIS 1143 (U.S. 1994).

Regarding state abortion statute requiring woman's informed consent but dispensing with such requirement in event of medical emergency, provision defining medical emergency did not violate due process clause. A central holding of Roe v. Wade, that woman may choose abortion before fetus is viable and without undue interference from state, but that state has power to restrict abortions after fetal viability if restrictions contain exceptions for pregnancies which endanger woman's life or health, and that state has legitimate interest from outset in protecting health of pregnant woman and life of a fetus which may become child, should be retained and reaffirmed. Planned Parenthood v. Casey, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674, 1992 U.S. LEXIS 4751 (U.S. 1992).

RESEARCH REFERENCES

ALR.

Right of action for injury to or death of woman who consented to illegal abortion. 36 A.L.R.3d 630.

Woman's right to have abortion without consent of, or against objections of, child's father. 62 A.L.R.3d 1097.

Validity of state statutes and regulations limiting or restricting public funding for abortions sought by indigent women. 20 A.L.R.4th 1166.

Medical malpractice in performance of legal abortion. 69 A.L.R.4th 875.

Validity of state "informed consent" statutes by which providers of abortions are required to provide patient seeking abortion with certain information. 119 A.L.R.5th 315.

Am. Jur.

1 Am. Jur. 2d, Abortion and Birth Control §§ 1 et seq.

1 Am. Jur. Pl & Pr Forms (Rev), Abortion, Form 3.2 (complaint, petition, or declaration – by operator of abortion clinic – against protestors – to enjoin illegal conduct in connection with picketing of abortion clinic).

CJS.

1 C.J.S., Abortion and Birth Control
Family Planning §§ 4-35.

Lawyers' Edition.

Validity, under Federal Constitution, of abortion laws. 35 L. Ed. 2d 735.

Supreme Court's views as to validity, under Federal Constitution, of abortion laws. 111 L. Ed. 2d 879.

§ 41-41-33. Consent; written certification.

(1) No abortion shall be performed or induced except with the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

(a) The woman is told the following by the physician who is to perform or induce the abortion or by the referring physician, orally and in person, at least twenty-four (24) hours before the abortion:

(i) The name of the physician who will perform or induce the abortion;

(ii) The particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage and breast cancer, and the danger to subsequent pregnancies and infertility;

(iii) The probable gestational age of the unborn child at the time the abortion is to be performed or induced; and

(iv) The medical risks associated with carrying her child to term.

(b) The woman is informed, by the physician or his agent, orally and in person, at least twenty-four (24) hours before the abortion:

(i) That medical assistance benefits may be available for prenatal care, childbirth and neonatal care;

(ii) That the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion;

(iii) That there are available services provided by public and private agencies which provide pregnancy prevention counseling and medical referrals for obtaining pregnancy prevention medications or devices; and

(iv) That she has the right to review the printed materials described in Section 41-41-35(1)(a), (b) and (c). The physician or his agent shall orally inform the woman that those materials have been provided by the State of Mississippi and that they describe the unborn child and list agencies that offer alternatives to abortion. If the woman chooses to view those materials, copies of them shall be furnished to her. The physician or his agent may disassociate himself or themselves from those materials, and may comment or refrain from comment on them as he chooses. The physician or his agent shall provide the woman with the printed materials described in Section 41-41-35(1)(d).

(c) The woman certifies in writing before the abortion that the information described in paragraphs (a) and (b) of this section has been furnished to her, and that she has been informed of her opportunity to review the information referred to in subparagraph (iv) of paragraph (b) of this section.

(d) Before the abortion is performed or induced, the physician who is to perform or induce the abortion receives a copy of the written certification prescribed by this section.

(2) The State Department of Health shall enforce the provisions of Sections 41-41-31 through 41-41-39 at abortion facilities, as defined in Section 41-75-1.

HISTORY:

Laws, 1991, ch. 439, § 2, eff from and after July 1, 1991 (Governor's veto overridden by the Legislature on March 28, 1991); Laws, 1996, ch. 442, § 1, eff from and after July 1, 1996.

Cross References —

Performance of abortions upon minors, see §§ 41-41-51 et seq.

JUDICIAL DECISIONS

1. In general.

Because the mandatory consultation and 24-hour delay ensures that a woman has given thoughtful consideration in deciding whether to obtain an abortion, § 41-41-33 does not create an undue burden and is therefore constitutional. Pro-Choice Miss. v. Fordice, 716 So. 2d 645, 1998 Miss. LEXIS 374 (Miss. 1998).

Racketeer Influenced and Corrupt Organizations (RICO) Act does not require proof that either racketeering enterprise or predicate acts of racketeering were motivated by economic purpose, therefore if abortion protesters-anti-abortion groups, individuals, and coalition of anti-abortion groups-had conspired nationwide to shut down abortion clinics through pattern of racketeering activity, including extortion, use of threatened or actual force, violence or fear, to injury of business and property interests of clinics, then clinics could maintain RICO action against protesters for violating Act. NOW v. Scheidler, 510 U.S. 249, 114 S. Ct. 798, 127 L. Ed. 2d 99, 1994 U.S. LEXIS 1143 (U.S. 1994).

A woman has the right, under the due process clause of the Federal Constitution's Fourteenth Amendment, to choose to have an abortion before fetal viability and to obtain an abortion without undue interference from the state, because before viability, a state's interests are not strong enough to support a prohibition of abortion or the imposition of a substantial obstacle to a woman's effective right to elect the procedure. Planned Parenthood v. Casey, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674, 1992 U.S. LEXIS 4751 (U.S. 1992).

Constitutional protection of a woman's decision to terminate her pregnancy derives from the due process clause of the Federal Constitution's Fourteenth Amendment, which prohibits states from depriving any person of liberty without due process of law, because (1) the due process clause applies to matters of substantive law as well as to matters of procedure, and thus, all fundamental rights comprised within the term "liberty" are protected by the Federal Constitution from invasion by the states; (2) neither the Bill of Rights nor the specific practices of the states at the time of the adoption of the Fourteenth Amendment mark the outer limits of the substantive sphere of liberty which the Fourteenth Amendment protects; (3) the full scope of the liberty guaranteed by the due process clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution, and this liberty is a rational continuum which, broadly speaking, includes freedom from all substantial arbitrary impositions and purposeless restraints, and which also recognizes that certain interests require particularly careful scrutiny of the state needs asserted to justify the abridgement of the interests; (4) the Constitution places limits on a state's right to interfere with a person's most basic decisions about family and parenthood, as well as bodily integrity; and (5) the Constitution protects personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education, and these matters are central to the liberty protected by the Fourteenth Amendment. Planned Parenthood v. Casey, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674, 1992 U.S. LEXIS 4751 (U.S. 1992).

The United States Supreme Court will reject the trimester framework established in Roe v. Wade (1973) 410 U.S. 113, 35 L. Ed. 2d 147, 93 S. Ct. 705, to determine the validity, under the Federal Constitution, of state regulation of abortion, under which framework (1) almost no regulation is permitted during the first trimester of pregnancy, (2) regulations designed to protect a pregnant woman's health, but not to further a state's interest in potential life, are permitted during the second trimester, and (3) during the third trimester, when the fetus is viable, prohibitions are permitted provided that the life or health of the mother is not at stake, where (1) three Justices of the Supreme Court express the view that (a) the trimester framework is not part of the essential holding of Roe v. Wade, (b) a logical reading of the central holding in Roe v. Wade, and a necessary reconciliation of a woman's liberty protected under the due process clause of the Federal Constitution's Fourteenth Amendment with the interest of a state in promoting prenatal life, require abandonment of the trimester framework as a rigid prohibition on all previability regulation aimed at the protection of fetal life, and (c) the undue burden standard, under which standard a state law that has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus is invalid under the Fourteenth Amendment, is the appropriate means of reconciling a state's interest with a woman's constitutionally protected liberty; and (2) four Justices express the view that Roe v. Wade was wrongly decided and should be overruled. Planned Parenthood v. Casey, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674, 1992 U.S. LEXIS 4751 (U.S. 1992).

The United States Supreme Court will hold that a state statute's provision concerning a pregnant woman's informed consent to an abortion, which provision requires that except in a medical emergency, (1) at least 24 hours before performing an abortion, a physician must inform the woman of the nature of the abortion procedure, the health risks of the abortion and of childbirth, and the probable gestational age of the unborn child, (2) the physician or a qualified nonphysician must inform the woman of the availability of printed materials published by the state describing the fetus and providing information about medical assistance for childbirth, information about child support from the father, and a list of agencies which provide adoption and other services as alternatives to abortion, and (3) the woman must certify in writing that she has been informed of the availability of these materials, and that if she has chosen to view the materials, she has been provided with them, does not violate the due process clause of the Federal Constitution's Fourteenth Amendment, where (1) three Justices of the Supreme Court express the view that the provision does not place an undue burden upon a woman's right to decide whether to terminate a pregnancy; and (2) four Justices express the view that (a) the informed consent provision is rationally related to the state's interest in assuring that a woman's consent to an abortion be fully informed, and (b) the 24-hour waiting period reasonably furthers the state's legitimate interests. Planned Parenthood v. Casey, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674, 1992 U.S. LEXIS 4751 (U.S. 1992).

A state abortion statute's provision concerning spousal notice, which provision prohibits a physician from performing an abortion on a married woman without receiving a signed statement from the woman that she has notified her spouse that she is about to undergo an abortion, unless the woman provides an alternative signed statement certifying that (1) her husband is not the man who impregnated her, (2) her husband cannot be located, (3) her pregnancy is the result of a spousal sexual assault which she has reported, or (4) she believes that notifying her husband will cause him or someone else to inflict bodily injury upon her, is an undue burden on a woman's right, under the due process clause of the Federal Constitution's Fourteenth Amendment, to undergo an abortion, and thus is unconstitutional, because (1) the vast majority of women notify their male partners of the decision to obtain an abortion; (2) in many cases in which married women do not notify their husbands, the pregnancy is the result of an extramarital affair; (3) when the husband is the father, the primary reason women do not notify their husbands is that the husband and wife are experiencing marital difficulties, often accompanied by incidents of violence; (4) victims of a spousal sexual assault are extremely reluctant to report the assault to the government, and thus the spousal notification requirement imposes a substantial obstacle that is likely to prevent a significant number of women from procuring an abortion as surely as if the state had outlawed abortion in all cases; (5) the spousal notice provision embodies a view of marriage that is repugnant to the modern understanding of marriage and of the nature of the rights secured by the Constitution; (6) women do not lose their constitutionally protected liberty when they marry; (7) state regulation with respect to the child a woman is carrying has a far greater impact on the mother's liberty than on the father's liberty, and the effect of state regulation on a woman's protected liberty is doubly deserving of scrutiny in such a case, as the state has touched upon not only the private sphere of the family, but also the bodily integrity of the pregnant woman; (8) the right of privacy includes the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters that so fundamentally affect a person as does the decision whether to bear or beget a child; (9) the Constitution protects all individuals, male or female, married or unmarried, from unjustified state interference, even when the interference is employed for the supposed benefit of a member of the individual's family, including the individual's spouse; (10) the women most affected by a spousal notice requirement are those who most reasonably fear the consequences of notifying their husbands; and (11) a husband's interest in the life of the child his wife is carrying does not permit a state to empower him with an effective veto power over his wife's decision to procure an abortion. Planned Parenthood v. Casey, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674, 1992 U.S. LEXIS 4751 (U.S. 1992).

Five members of Court expressed view that provision of state abortion statute requiring spousal notice violated due process clause by imposing undue burden on woman's abortion rights because notice requirement enabled husband to weild, in effect, veto over wife's decision. Planned Parenthood v. Casey, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674, 1992 U.S. LEXIS 4751 (U.S. 1992).

The Federal Government has no duty, under the due process clause of the Federal Constitution's Fifth Amendment, to subsidize an activity merely because the activity is constitutionally protected, and thus it may validly choose to fund childbirth over abortion and implement that judgment in health regulations by the allocation of public funds for medical services relating to childbirth but not to those relating to abortion; the government has no affirmative duty under the due process clause to commit any resources to facilitating abortions, and its decision to fund childbirth but not abortion places no governmental obstacle in the path of a woman who chooses to terminate her pregnancy, but rather, by means of unequal subsidization of abortion and other medical services, encourages alternative activity deemed in the public interest. Rust v. Sullivan, 500 U.S. 173, 111 S. Ct. 1759, 114 L. Ed. 2d 233, 1991 U.S. LEXIS 2908 (U.S. 1991).

Provisions of state statute prohibiting use of public facilities and employees to perform or assist abortions not necessary to save mother's life were not unconstitutional and did not contravene Supreme Court's abortion decisions; question as to constitutionality of provision prohibiting public funding for encouraging or counseling woman to have abortion not necessary to save her life, was moot. Webster v. Reproductive Health Services, 492 U.S. 490, 109 S. Ct. 3040, 106 L. Ed. 2d 410, 1989 U.S. LEXIS 3290 (U.S. 1989).

An individual Justice of the United States Supreme Court, as Circuit Justice, will deny an application, filed by the natural father of an unborn child, for an order enjoining the mother from aborting the child, where (1) the state trial court in which the proceedings were initiated has found that even if the United States Supreme Court's decision in Planned Parenthood of Missouri v. Danforth (1976) 428 U.S. 52, 49 L. Ed. 2d 788, 96 S. Ct. 2831, permits the balancing of the father's and the mother's interests, the mother's interests would outweigh the father's, since (a) the father and mother are not married, (b) there is no suggestion that they will ever reunite, (c) the father is able to father other children and has other children, and (d) the father has shown substantial instability in his marital and romantic life, (2) the state's highest court has denied a petition for stay in reliance upon (a) the presumption of validity accorded trial court judgments, (b) the Danforth decision, and (c) the insufficient likelihood that the father will prevail on the merits, (3) the Justice has serious doubts concerning the availability of a federal remedy for the father's claim, in view of the fact that the mother's decision to obtain an abortion can be carried out without any action on the part of the state or its governmental subdivisions, (4) a delay in implementing the mother's decision might increase the risk of physical or emotional harm to her, and (5) the Justice has substantial doubt whether there has yet been a final decision by the state's highest court that would provide a basis for appellate jurisdiction in the United States Supreme Court. Doe v. Smith, 486 U.S. 1308, 108 S. Ct. 2136, 100 L. Ed. 2d 909, 1988 U.S. LEXIS 2870 (U.S. 1988).

The constitutional dimensions of a woman's right to end her pregnancy are entitled to judicial recognition; a woman's decision, with the guidance of her physician and within certain limits, as to whether to end her pregnancy, is personal and intimate, properly private, and basic to individual dignity and autonomy; a woman's right to make that choice freely is fundamental. Thornburgh v. American College of Obstetricians & Gynecologists, 476 U.S. 747, 106 S. Ct. 2169, 90 L. Ed. 2d 779, 1986 U.S. LEXIS 54 (U.S. 1986), overruled in part, Planned Parenthood v. Casey, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674, 1992 U.S. LEXIS 4751 (U.S. 1992).

The states are not free, under the guise of protecting maternal health or potential life, to intimidate women into continuing pregnancies, by enacting statutory provisions which wholly subordinate constitutional privacy interests and concerns with maternal health in an effort to deter a woman from making a decision that, with her physician, is hers to make. Thornburgh v. American College of Obstetricians & Gynecologists, 476 U.S. 747, 106 S. Ct. 2169, 90 L. Ed. 2d 779, 1986 U.S. LEXIS 54 (U.S. 1986), overruled in part, Planned Parenthood v. Casey, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674, 1992 U.S. LEXIS 4751 (U.S. 1992).

A requirement that a woman gave what is truly a voluntary and informed consent to an abortion, as a general proposition, is proper and not unconstitutional, but the state may not require information designed to influence the woman's informed choice between abortion or childbirth; state provisions requiring the delivery of specific information are unconstitutional where (1) the information required seems to be an attempt to wedge the state's message discouraging abortion into the privacy of the informed-consent dialogue between the woman and her physician, and (2) under the guise of informed consent, the provisions require the dissemination of information that is not relevant to such consent, and thus advance no legitimate state interest. Thornburgh v. American College of Obstetricians & Gynecologists, 476 U.S. 747, 106 S. Ct. 2169, 90 L. Ed. 2d 779, 1986 U.S. LEXIS 54 (U.S. 1986), overruled in part, Planned Parenthood v. Casey, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674, 1992 U.S. LEXIS 4751 (U.S. 1992).

City ordinance requiring all second trimester abortions to be performed in hospital violates due process clause, and provisions of ordinance dealing with parental consent, informed consent, 24-hour waiting period, and disposal of fetal remains are unconstitutional. City of Akron v. Akron Ctr. for Reproductive Health, 462 U.S. 416, 103 S. Ct. 2481, 76 L. Ed. 2d 687, 1983 U.S. LEXIS 63 (U.S. 1983), overruled in part, Planned Parenthood v. Casey, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674, 1992 U.S. LEXIS 4751 (U.S. 1992).

A woman has a fundamental right to make the personal choice whether or not to terminate her pregnancy. City of Akron v. Akron Ctr. for Reproductive Health, 462 U.S. 416, 103 S. Ct. 2481, 76 L. Ed. 2d 687, 1983 U.S. LEXIS 63 (U.S. 1983), overruled in part, Planned Parenthood v. Casey, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674, 1992 U.S. LEXIS 4751 (U.S. 1992).

A woman has at least an equal right to choose to carry her fetus to term as to choose to abort it. Maher v. Roe, 432 U.S. 464, 97 S. Ct. 2376, 53 L. Ed. 2d 484, 1977 U.S. LEXIS 129 (U.S. 1977).

State may not impose restrictions or regulations governing the medical judgment of a pregnant woman's attending physician with respect to the termination of her pregnancy. Planned Parenthood v. Danforth, 428 U.S. 52, 96 S. Ct. 2831, 49 L. Ed. 2d 788, 1976 U.S. LEXIS 13 (U.S. 1976).

Prior to the end of the first trimester of pregnancy, an attending physician, in consultation with his patient, is free to determine, without regulation by the state, that in his medical judgment the patient's pregnancy should be terminated; and if such a decision is reached, the physician's judgment may be effectuated by an abortion free of interference by the state. Roe v. Wade, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147, 1973 U.S. LEXIS 159 (U.S. 1973), overruled in part, Planned Parenthood v. Casey, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674, 1992 U.S. LEXIS 4751 (U.S. 1992).

OPINIONS OF THE ATTORNEY GENERAL

A woman may be told the information required in Section 41-41-33(a) through a telephone conference. 1995 Miss. Op. Att'y Gen. 318.

RESEARCH REFERENCES

ALR.

Right of action for injury to or death of woman who consented to illegal abortion. 36 A.L.R.3d 630.

Woman's right to have abortion without consent of, or against objections of, child's father. 62 A.L.R.3d 1097.

Validity of state statutes and regulations limiting or restricting public funding for abortions sought by indigent women. 20 A.L.R.4th 1166.

Medical malpractice in performance of legal abortion. 69 A.L.R.4th 875.

Validity of state "informed consent" statutes by which providers of abortions are required to provide patient seeking abortion with certain information. 119 A.L.R.5th 315.

Am. Jur.

1 Am. Jur. 2d, Abortion and Birth Control §§ 1 et seq.

1 Am. Jur. Pl & Pr Forms (Rev), Abortion, Form 3.1 (complaint, petition, or declaration – gynecologist's prescription of drug to pregnant woman – forcing pregnant woman to choice of submitting to abortion or of risking birth of congenitally defective child).

1 Am. Jur. Pl & Pr Forms (Rev), Abortion, Form 3.2 (complaint, petition, or declaration – by operator of abortion clinic – against protestors – to enjoin illegal conduct in connection with picketing of abortion clinic).

CJS.

1 C.J.S., Abortion and Birth Control
Family Planning §§ 4-35.

Lawyers' Edition.

Validity, under Federal Constitution, of abortion laws. 35 L. Ed. 2d 735.

Supreme Court's views as to validity, under Federal Constitution, of abortion laws. 111 L. Ed. 2d 879.

§ 41-41-34. Performance of fetal ultrasound imaging and auscultation of fetal heart tone services required before abortion; patient to be offered opportunity to view ultrasound image and hear heartbeat; patient to sign certification form acknowledging being given that opportunity; physician to retain copy of signed certification form.

(1) Before the performance of an abortion, as defined in Section 41-41-45, the physician who is to perform the abortion, or a qualified person assisting the physician, shall:

(a) Perform fetal ultrasound imaging and auscultation of fetal heart tone services on the patient undergoing the abortion;

(b) Offer to provide the patient with an opportunity to view the active ultrasound image of the unborn child and hear the heartbeat of the unborn child if the heartbeat is audible;

(c) Offer to provide the patient with a physical picture of the ultrasound image of the unborn child;

(d) Obtain the patient's signature on a certification form stating that the patient has been given the opportunity to view the active ultrasound image and hear the heartbeat of the unborn child if the heartbeat is audible, and that she has been offered a physical picture of the ultrasound image; and

(e) Retain a copy of the signed certification form in the patient's medical record.

(2) The State Department of Health shall enforce the requirements of this section.

(3) An ultrasound image must be of a quality consistent with standard medical practice in the community, shall contain the dimensions of the unborn child and shall accurately portray the presence of external members and internal organs, if present or viewable, of the unborn child.

HISTORY:

Laws, 2007, ch. 441, § 3, eff from and after July 1, 2007.

Editor's Notes —

Laws of 2007, ch. 441, §§ 5 and 6 provide:

"SECTION 5. (1) If any provision of Chapter 441, Laws of 2007, is found to be unconstitutional, the provision is severable; and the other provisions of Chapter 441, Laws of 2007 remain effective, except as provided in other sections of Chapter 441, Laws of 2007.

"(2) Nothing in Chapter 441, Laws of 2007, may be construed to repeal, by implication or otherwise, any provision not explicitly repealed.

"(3) If any provision of Chapter 441, Laws of 2007 is ever declared unconstitutional or its enforcement temporarily or permanently restricted or enjoined by judicial order, the provisions of Sections 41-41-31 through 41-41-91, Mississippi Code of 1972, shall be enforced. However, if such temporary or permanent restraining order or injunction is subsequently stayed or dissolved or such declaration vacated or any similar court order otherwise ceases to have effect, all provisions of Chapter 441, Laws of 2007, that are not declared unconstitutional or whose enforcement is not restrained shall have full force and effect.

"(4) Nothing in the provisions of Sections 41-41-31 through 41-41-91, Mississippi Code of 1972, shall be construed to permit any action that is prohibited by Chapter 441, Laws of 2007, and to the extent that any provision of Sections 41-41-31 through 41-41-91, Mississippi Code of 1972, would be so construed, then the provisions of Senate Bill No. 2391, 2007 Regular Session, shall take precedence.

"SECTION 6. Sections 1, 3, 4 and 5 of this act shall take effect from and after July 1, 2007. Section 2 of this act shall take effect and be in force from and after ten (10) days following the date of publication by the Attorney General of Mississippi in the administrative bulletin published by the Secretary of State as provided in Section 25-43-2.101, Mississippi Code of 1972, that the Attorney General has determined that the United States Supreme Court has overruled the decision of *Roe v. Wade* , 410 U.S. 113 (1973), and that it is reasonably probable that Section 2 of this act would be upheld by the court as constitutional."

§ 41-41-35. Duties of State Department of Health; printed materials.

(1) The State Department of Health shall cause to be published in English within sixty (60) days after July 1, 1991, the following easily comprehensible printed materials:

(a) Geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth and while the child is dependent, including adoption agencies, which shall include a comprehensive list of the agencies available, a description of the services they offer and a description of the manner, including telephone numbers, in which they might be contacted, or, at the option of the Department of Health, printed materials including a toll-free, twenty-four-hour-a-day telephone number which may be called to obtain, orally, such a list and description of agencies in the locality of the caller and of the services they offer.

(b) Materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including any relevant information on the possibility of the unborn child's survival. The materials shall include color pictures representing the development of the child at two-week gestational increments. These pictures must contain the dimensions of the unborn child and must be realistic. The materials shall be objective, nonjudgmental and designed to convey only accurate scientific information about the unborn child at the various gestational ages.

(c) Materials that include the information described in subparagraphs (ii) and (iv) of paragraph (1)(a) of Section 41-41-33 and in subparagraphs (i), (ii) and (iii) of paragraph (1)(b) of Section 41-41-33.

(d) Materials designed to inform the woman of pregnancy prevention methods for females and males, which materials shall describe each method in detail and include pictures or diagrams that illustrate the proper usage of each method.

(2) The materials shall be printed in a typeface large enough to be clearly legible.

(3) The materials required under this section shall be available at no cost from the Department of Health upon request and in appropriate number to any person, facility or hospital.

(4) The Department of Health shall review the printed materials required by subsection (1) of this section on an annual basis in order to determine if any changes are needed to be made to the contents of the materials, and shall promulgate any rules and regulations necessary for considering and making such changes.

HISTORY:

Laws, 1991, ch. 439, § 3, eff from and after July 1, 1991 (Governor's veto overridden by the Legislature on March 28, 1991); Laws, 1996, ch. 442, § 2, eff from and after July 1, 1996.

JUDICIAL DECISIONS

1. In general.

Health and Human Service regulations limiting ability of Federal Title X fund recipients to engage to abortion related activities were permissible construction of Title X, did not impose viewpoint-discriminatory conditions on government subsidy so as to violate First Amendment free speech rights of either private health care organizations that received Title X funds, their staffs, or their patients, and did not violate women's rights under due process clause of Fifth Amendment. Rust v. Sullivan, 500 U.S. 173, 111 S. Ct. 1759, 114 L. Ed. 2d 233, 1991 U.S. LEXIS 2908 (U.S. 1991).

The Federal Government has no duty, under the due process clause of the Federal Constitution's Fifth Amendment, to subsidize an activity merely because the activity is constitutionally protected, and thus it may validly choose to fund childbirth over abortion and implement that judgment in health regulations by the allocation of public funds for medical services relating to childbirth but not to those relating to abortion; the government has no affirmative duty under the due process clause to commit any resources to facilitating abortions, and its decision to fund childbirth but not abortion places no governmental obstacle in the path of a woman who chooses to terminate her pregnancy, but rather, by means of unequal subsidization of abortion and other medical services, encourages alternative activity deemed in the public interest. Rust v. Sullivan, 500 U.S. 173, 111 S. Ct. 1759, 114 L. Ed. 2d 233, 1991 U.S. LEXIS 2908 (U.S. 1991).

State statutory provisions which make it unlawful for any public employees within the scope of their employment to perform or assist an abortion not necessary to save the life of the mother and which prohibit the use of any public facility for the purpose of performing or assisting an abortion not necessary to save the life of the mother do not contravene the abortion decisions of the United States Supreme Court, because (1) the state's decision to use public facilities and staff to encourage childbirth over abortion places no governmental obstacle in the path of a woman who chooses to terminate her pregnancy and leaves a pregnant woman with the same choices as if the state had chosen not to operate any public hospitals at all, (2) such provisions restrict a woman's ability to obtain an abortion only to the extent that she chooses to use a physician affiliated with a public hospital, which circumstance is more easily remedied, and thus is considerably less burdensome, than indigency, which may make it difficult, and in some cases, perhaps impossible, for some women to have abortions without public funding, (3) if the state may make a value judgment favoring childbirth over abortion and implement such judgment by the allocation of public funds, it likewise may do so through the allocation of other public resources, such as hospitals and medical staff, and (4) nothing in the Federal Constitution requires states to enter or remain in the business of performing abortions, nor do private physicians and their patients have some kind of constitutional right of access to public facilities for the performance of abortions, and a state need not commit any resources to facilitating abortions even if it can turn a profit by doing so. Webster v. Reproductive Health Services, 492 U.S. 490, 109 S. Ct. 3040, 106 L. Ed. 2d 410, 1989 U.S. LEXIS 3290 (U.S. 1989).

The states are not free, under the guise of protecting maternal health or potential life, to intimidate women into continuing pregnancies, by enacting statutory provisions which wholly subordinate constitutional privacy interests and concerns with maternal health in an effort to deter a woman from making a decision that, with her physician, is hers to make. Thornburgh v. American College of Obstetricians & Gynecologists, 476 U.S. 747, 106 S. Ct. 2169, 90 L. Ed. 2d 779, 1986 U.S. LEXIS 54 (U.S. 1986), overruled in part, Planned Parenthood v. Casey, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674, 1992 U.S. LEXIS 4751 (U.S. 1992).

When issue involves policy choices as sensitive as those implicated by the public funding of nontherapeutic abortions, the appropriate forum for their resolution in a democracy is the legislature. Maher v. Roe, 432 U.S. 464, 97 S. Ct. 2376, 53 L. Ed. 2d 484, 1977 U.S. LEXIS 129 (U.S. 1977).

RESEARCH REFERENCES

ALR.

Right of action for injury to or death of woman who consented to illegal abortion. 36 A.L.R.3d 630.

Woman's right to have abortion without consent of, or against objections of, child's father. 62 A.L.R.3d 1097.

Validity of state statutes and regulations limiting or restricting public funding for abortions sought by indigent women. 20 A.L.R.4th 1166.

Medical malpractice in performance of legal abortion. 69 A.L.R.4th 875.

Validity of state "informed consent" statutes by which providers of abortions are required to provide patient seeking abortion with certain information. 119 A.L.R.5th 315.

Am. Jur.

1 Am. Jur. 2d, Abortion and Birth Control §§ 1 et seq.

1 Am. Jur. Pl & Pr Forms (Rev), Abortion, Form 3.2 (complaint, petition, or declaration – by operator of abortion clinic – against protestors – to enjoin illegal conduct in connection with picketing of abortion clinic).

CJS.

1 C.J.S., Abortion and Birth Control Family Planning §§ 4-35.

Lawyers' Edition.

Validity, under Federal Constitution, of abortion laws. 35 L. Ed. 2d 735.

Supreme Court's views as to validity, under Federal Constitution, of abortion laws. 111 L. Ed. 2d 879.

§ 41-41-37. Physician to inform woman of medical emergency.

When a medical emergency compels the performance or induction of an abortion, the physician shall inform the woman, before the abortion if possible, of the medical indications supporting his judgment that an abortion is necessary to avert her death or for which a twenty-four-hour delay will create grave peril of immediate and irreversible loss of major bodily function.

HISTORY:

Laws, 1991, ch. 439, § 4, eff from and after July 1, 1991 (Governor's veto overridden by the Legislature on March 28, 1991).

Cross References —

Performance of abortions upon minors, see §§ 41-41-51 et seq.

JUDICIAL DECISIONS

1. In general.

Under the due process clause of the Federal Constitution's Fourteenth Amendment, a state (1) may take steps to insure that a woman's decision whether to have an abortion is thoughtful and informed, and (2) is free to enact laws to provide a reasonable framework for a woman to make a decision that has such profound and lasting meaning as does a decision whether to terminate a pregnancy. Planned Parenthood v. Casey, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674, 1992 U.S. LEXIS 4751 (U.S. 1992).

RESEARCH REFERENCES

ALR.

Right of action for injury to or death of woman who consented to illegal abortion. 36 A.L.R.3d 630.

Woman's right to have abortion without consent of, or against objections of, child's father. 62 A.L.R.3d 1097.

Modern status of views as to general measure of physician's duty to inform patient of risks of proposed treatment. 88 A.L.R.3d 1008.

Medical malpractice in performance of legal abortion. 69 A.L.R.4th 875.

Validity of state "informed consent" statutes by which providers of abortions are required to provide patient seeking abortion with certain information. 119 A.L.R.5th 315.

Provision of family planning services under Title X of Public Health Service Act (42 USCS secs. 300-300a-8) and implementing regulations. 71 A.L.R. Fed. 961.

Am. Jur.

1 Am. Jur. 2d, Abortion and Birth Control §§ 1 et seq.

1 Am. Jur. Pl & Pr Forms (Rev), Abortion, Form 3.1 (complaint, petition, or declaration – gynecologist's prescription of drug to pregnant woman – forcing pregnant woman to choice of

submitting to abortion or of risking birth of congenitally defective child).

CJS.
1 C.J.S., Abortion and Birth Control Family Planning §§ 4-35.

Lawyers' Edition.
Validity, under Federal Constitution, of abortion laws. 35 L. Ed. 2d 735.

Supreme Court's views as to validity of laws restricting or prohibiting sale or distribution to minors of particular types of goods or services otherwise available to adults. 52 L. Ed. 2d 892.

§ 41-41-39. Violation of provisions as misdemeanor.

Anyone who purposefully, knowingly or recklessly performs or attempts to perform or induce an abortion without complying with Sections 41-41-31 through 41-41-37 shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine of One Thousand Dollars ($1,000.00), by imprisonment in the county jail for a period of time not to exceed six (6) months or both such fine and imprisonment.

HISTORY:
Laws, 1991, ch. 439, § 5, eff from and after July 1, 1991 (Governor's veto overridden by the Legislature on March 28, 1991).

Cross References —
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.
Racketeer Influenced and Corrupt Organizations (RICO) Act does not require proof that either racketeering enterprise or predicate acts of racketeering were motivated by economic purpose, therefore if abortion protesters-anti-abortion groups, individuals, and coalition of anti-abortion groups-had conspired nationwide to shut down abortion clinics through pattern of racketeering activity, including extortion, use of threatened or actual force, violence or fear, to injury of business and property interests of clinics, then clinics could maintain RICO action against protesters for violating Act. NOW v. Scheidler, 510 U.S. 249, 114 S. Ct. 798, 127 L. Ed. 2d 99, 1994 U.S. LEXIS 1143 (U.S. 1994).

RESEARCH REFERENCES

ALR.
Validity of state "informed consent" statutes by which providers of abortions are required to provide patient seeking abortion with certain information. 119 A.L.R.5th 315.

§ 41-41-45. Abortion prohibited; exceptions.

[From and after ten days following the date of publication by the Attorney General of Mississippi that the Attorney General has determined that the United States Supreme Court has overruled the decision of Roe v. Wade, and that it is reasonably probable that this section would be upheld by the Court as constitutional, this section will read as follows:]

(1) As used in this section, the term "abortion" means the use or prescription of any instrument, medicine, drug or any other substance or

device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth or to remove a dead fetus.

(2) No abortion shall be performed or induced in the State of Mississippi, except in the case where necessary for the preservation of the mother's life or where the pregnancy was caused by rape.

(3) For the purposes of this section, rape shall be an exception to the prohibition for an abortion only if a formal charge of rape has been filed with an appropriate law enforcement official.

(4) Any person, except the pregnant woman, who purposefully, knowingly or recklessly performs or attempts to perform or induce an abortion in the State of Mississippi, except in the case where necessary for the preservation of the mother's life or where the pregnancy was caused by rape, upon conviction, shall be punished by imprisonment in the custody of the Department of Corrections for not less than one (1) year nor more than ten (10) years.

HISTORY:

Laws, 2007, ch. 441, § 2, eff from and after ten days following the date of publication by the Attorney General of Mississippi that the Attorney General has determined that the United States Supreme Court has overruled the decision of Roe v. Wade, and that it is reasonably probable that this section would be upheld by the Court as constitutional.

Editor's Notes —

Laws of 2007, ch. 441, §§ 4 through 6 provide:

"SECTION 4. At such time as the Attorney General of Mississippi determines that the United States Supreme Court has overruled the decision of Roe v. Wade, 410 U.S. 113 (1973), and that as a result, it is reasonably probable that Section 2 of this act would be upheld by the court as constitutional, the Attorney General shall publish his determination of that fact in the administrative bulletin published by the Secretary of State as provided in Section 25-43-2.101, Mississippi Code of 1972.

"SECTION 5. (1) If any provision of Chapter 441, Laws of 2007, is found to be unconstitutional, the provision is severable; and the other provisions of Chapter 441, Laws of 2007 remain effective, except as provided in other sections of Chapter 441, Laws of 2007.

"(2) Nothing in Chapter 441, Laws of 2007, may be construed to repeal, by implication or otherwise, any provision not explicitly repealed.

"(3) If any provision of Chapter 441, Laws of 2007 is ever declared unconstitutional or its enforcement temporarily or permanently restricted or enjoined by judicial order, the provisions of Sections 41-41-31 through 41-41-91, Mississippi Code of 1972, shall be enforced. However, if such temporary or permanent restraining order or injunction is subsequently stayed or dissolved or such declaration vacated or any similar court order otherwise ceases to have effect, all provisions of Chapter 441, Laws of 2007, that are not declared unconstitutional or whose enforcement is not restrained shall have full force and effect.

"(4) Nothing in the provisions of Sections 41-41-31 through 41-41-91, Mississippi Code of 1972, shall be construed to permit any action that is prohibited by Chapter 441, Laws of 2007, and to the extent that any provision of Sections 41-41-31 through 41-41-91, Mississippi Code of 1972, would be so construed, then the provisions of Senate Bill No. 2391, 2007 Regular Session, shall take precedence.

"SECTION 6. Sections 1, 3, 4 and 5 of this act shall take effect from and after July 1, 2007. Section 2 of this act shall take effect and be in force from and after ten (10) days following the date of publication by the Attorney General of Mississippi in the administrative bulletin published by the Secretary of State as provided in Section 25-43-2.101, Mississippi Code of 1972, that the Attorney General has determined that the United States Supreme Court has overruled the decision of *Roe v. Wade*, 410 U.S. 113 (1973), and that it is reasonably probable that Section 2 of this act would be upheld by the court as constitutional."

PERFORMANCE OF ABORTIONS UPON MINORS; CONSENT

Sec.

41-41-51.	Definitions.
41-41-53.	Requirement of written consent; petition for waiver.
41-41-55.	Applicability of provisions; court proceedings; standards for waiver of consent requirement.
41-41-57.	Exception for medical emergency.
41-41-59.	Violation of provisions as prima facie evidence of physician's unprofessional conduct.
41-41-61.	Confidentiality of records and information; penalty for disclosure.
41-41-63.	Severability of provisions.

§ 41-41-51. Definitions.

For purposes of Sections 41-41-51 through 41-41-63, the following definitions shall apply:

(a) "Minor" means any person under the age of eighteen (18) years;

(b) "Emancipated minor" means any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of her parents;

(c) "Abortion" means the use of any instrument, medicine, drug or any other substance or device with intent to terminate the pregnancy of a woman known to be pregnant, with intent other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus.

HISTORY:

Laws, 1986, ch. 448, § 1, eff from and after July 1, 1986.

Cross References —

Uniform health care decisions act applicability, see § 41-41-227.

Comparable Laws from other States —

Alabama Code, § 26-21-1 et seq.

Arkansas Code Annotated, § 20-16-801 et seq.

Georgia Code Annotated, § 15-11-110 et seq.

North Carolina General Statutes, §§ 90-216 et seq.

Tennessee Code Annotated, § 37-10-301 et seq.

JUDICIAL DECISIONS

1. In general.

The two-parent consent law for abortions for minors is not too restrictive and passes the undue burden test for determining state constitutionality. Pro-Choice Miss. v. Fordice, 716 So. 2d 645, 1998 Miss. LEXIS 374 (Miss. 1998).

The United States Supreme Court will hold that the record-keeping and reporting requirements of a state abortion statute, under which statute (1) every facility performing abortions is required to file a report stating the facility's name and address as well as the name and address of any related entity, (2) such information, when it comes from state-funded institutions, becomes public, (3) for each abortion, a report must be filed specifying such information as (a) the performing physician, (b) the facility, (c) the referring physician or agency, (d) the pregnant woman's age, (e) the number of prior pregnancies and abortions the woman has had, (f) gestational age, (g) the type of abortion procedure, (h) the date of the abortion, (i) whether there were any pre-existing medical conditions that would have complicated pregnancy, (j) the basis for the determination that the abortion was medically necessary, and (k) the weight of the aborted fetus; and (4) in all events, the identity of each woman who has had an abortion remains confidential, do not violate the due process clause of the Federal Constitution's Fourteenth Amendment, where (1) four Justices of the Supreme Court express the view that such requirements relate to maternal health and do not pose a substantial obstacle to a woman's choice as to whether to terminate a pregnancy; and (2) four Justices express the view that such requirements rationally further the state's legitimate interests in medical knowledge concerning maternal health and prenatal life, in gathering statistical information concerning patients, and in assuring compliance with other provisions of the abortion statute. Planned Parenthood v. Casey, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674, 1992 U.S. LEXIS 4751 (U.S. 1992).

A provision of a state statute that, with certain exceptions, prohibits any person from performing an abortion on an unmarried, unemancipated minor absent notice to one of the minor's parents or a juvenile court order authorizing the minor to consent, which provision allows a physician to perform an abortion on such a minor where either (1) the physician provides at least 24 hours' actual notice of his intention to perform the abortion, in person or by telephone, to (a) one of the minor's parents or her guardian or custodian, or (b) the minor's adult brother, sister, stepparent, or grandparent, if the minor and the other relative each file an affidavit in the juvenile court stating that the minor fears physical, sexual, or severe emotional abuse from one of her parents, or (2) a physician who cannot give actual notice after a reasonable effort provides at least 48 hours' constructive notice by both ordinary and certified mail, does not render the statute unconstitutional, under the Federal Constitution, insofar as such provision requires that notice be given by the physician, rather than by some other qualified person; a state may constitutionally require a physician to take reasonable steps to notify the parent of a minor seeking an abortion, because (1) the parent often will provide important medical data to the physician, (2) a conversation with the physician may enable the parent to provide better advice to the minor, and (3) access to an experienced and, in an ideal case, detached physician who can assist the parent in approaching the problem in a mature and balanced way may benefit both the parent and the child in a manner not possible through notice by less qualified persons; furthermore, any imposition which such provision makes on the physician's schedule is unobjectionable in light of the provision's allowance for notice by mail and for the forgoing of notice in the event of certain emergencies. Ohio v. Akron Ctr. for Reproductive Health, 497 U.S. 502, 110 S. Ct. 2972, 111 L. Ed. 2d 405, 1990 U.S. LEXIS 3302 (U.S. 1990).

A state statutory provision requiring, except under certain circumstances, that an unemancipated minor's physician or an agent give written notice to both of the minor's parents, either by delivery personally to the parents or by certified mail, before an abortion is performed on the minor, no exception being made as to a divorced parent, a noncustodial parent, or a biological parent who never married or lived with the minor's mother, does not reasonably further any legitimate state interest, given that (1) to the extent that a state has a legitimate interest in supporting the authority of a parent who is presumed to act in the minor's best interest and thereby assuring that the minor's decision to terminate her pregnancy is knowing, intelligent, and deliberate, such an interest would be fully served by a requirement that the minor notify one parent, because (a) in the ideal family setting, notice to one parent would normally constitute notice to both, (b) in families in which the notified parent would not notify the other parent, the state has no legitimate interest in (i) questioning one parent's judgment that notice to the other parent would not assist the minor, or (ii) presuming that the parent who has assumed parental duties is incompetent to make decisions regarding the minor's health and welfare, and (c) with respect to dysfunctional families, a two-parent notice requirement disserves the state interest in protecting and assisting the minor, in light of evidence that in thousands of such families, such a requirement proves harmful to the minor and her family, (2) although both parents may well have an interest in the minor's abortion decision, full communication among all members of a family may not validly be decreed by the state, and (3) any state interest in protecting a parent's interest in shaping a child's values and lifestyle cannot overcome the liberty interests of a minor acting with the consent of a single parent, since the combined force of one parent's separate interest and the minor's privacy interest outweighs the separate interest of the second parent; the fact that other state and federal consent provisions governing the health, welfare, and education of children require only one parent's consent provides testimony to the unreasonableness of the two-parent notice requirement and to the ease with which the state can adopt less burdensome means to protect the minor's welfare; thus, the two-parent notice requirement violates the Federal Constitution. Hodgson v. Minnesota, 497 U.S. 417, 110 S. Ct. 2926, 111 L. Ed. 2d 344, 1990 U.S. LEXIS 3303 (U.S. 1990).

A state may, consistent with the Federal Constitution, provide by statute that, except under certain circumstances, an unemancipated minor's physician or an agent must give written notice, either by delivery personally to the parents or by certified mail, to both of the minor's parents before an abortion is performed on the minor, but that a court of competent jurisdiction shall authorize the abortion to proceed without such notice if the court determines that (1) the minor is mature and capable of giving informed consent, or (2) an abortion without notice to both parents would be in the minor's best interest. Hodgson v. Minnesota, 497 U.S. 417, 110 S. Ct. 2926, 111 L. Ed. 2d 344, 1990 U.S. LEXIS 3303 (U.S. 1990).

In furtherance of a state's interest in the welfare of a pregnant minor, the state may, without violating the Federal Constitution, require that (1) an unemancipated minor's decision to terminate her pregnancy be made only after notification to and consultation with a parent, and (2) no abortion be performed on such a minor until at least 48 hours after such notification is given. Hodgson v. Minnesota, 497 U.S. 417, 110 S. Ct. 2926, 111 L. Ed. 2d 344, 1990 U.S. LEXIS 3303 (U.S. 1990).

State statutory provisions requiring the reporting of certain information regarding abortions are unconstitutional where (1) the scope of the information required and its availability to the public belie any assertions by the state that it is advancing any legitimate interest, and (2) the reporting requirements raise the spectre of public exposure and harassment of women who choose to exercise their personal, intensely private right, with their physician, to end a pregnancy, and the requirements thus impose an unacceptable danger of deterring the exercise of that right. Thornburgh v. American College of Obstetricians & Gynecologists, 476 U.S. 747, 106 S. Ct. 2169, 90 L. Ed. 2d 779, 1986 U.S. LEXIS 54 (U.S. 1986), overruled in part, Planned Parenthood v. Casey, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674, 1992 U.S. LEXIS 4751 (U.S. 1992).

RESEARCH REFERENCES

Am. Jur.
1 Am. Jur. 2d, Abortion and Birth Control §§ 1 et seq.

CJS.
1 C.J.S., Abortion and Birth Control Family Planning §§ 4-35.

Lawyers' Edition.
Supreme Court's views as to validity, under Federal Constitution, of abortion laws. 111 L. Ed. 2d 879.

§ 41-41-53. Requirement of written consent; petition for waiver.

(1) Except as otherwise provided in subsections (2) and (3) of this section, no person shall perform an abortion upon an unemancipated minor unless he or his agent first obtains the written consent of both parents or the legal guardian of the minor.

(2)(a) If the minor's parents are divorced or otherwise unmarried and living separate and apart, then the written consent of the parent with primary custody, care and control of such minor shall be sufficient.

(b) If the minor's parents are married and one (1) parent is not available to the person performing the abortion in a reasonable time and manner, then the written consent of the parent who is available shall be sufficient.

(c) If the minor's pregnancy was caused by sexual intercourse with the minor's natural father, adoptive father or stepfather, then the written consent of the minor's mother shall be sufficient.

(3) A minor who elects not to seek or does not obtain consent from her parents or legal guardian under this section may petition, on her own behalf or by next friend, the chancery court in the county in which the minor resides or in the county in which the abortion is to be performed for a waiver of the consent requirement of this section pursuant to the procedures of Section 41-41-55.

HISTORY:

Laws, 1986, ch. 448, § 2, eff from and after July 1, 1986.

Cross References —

Provision that a minor may proceed as though the consent requirement of this section has been waived if the chancery court fails to rule within 72 hours after an application for waiver has been filed, see § 41-41-55.

Requirement that a physician who does not comply with this section by reason of a medical emergency must state in the medical record the medical indications on which his judgment was based, see § 41-41-57.

JUDICIAL DECISIONS

1. In general.

Racketeer Influenced and Corrupt Organizations (RICO) Act does not require proof that either racketeering enterprise or predicate acts of racketeering were motivated by economic purpose, therefore if abortion protesters – anti-abortion groups, individuals, and coalition of anti-abortion groups – had conspired nationwide to shut down abortion clinics through pattern of racketeering activity, including extortion, use of threatened or actual force, violence or fear, to injury of business and property interests of clinics, then clinics could maintain RICO action against protesters for violating Act. NOW v. Scheidler, 510 U.S. 249, 114 S. Ct. 798, 127 L. Ed. 2d 99, 1994 U.S. LEXIS 1143 (U.S. 1994).

Provision of abortion statute requiring that minor seeking abortion must obtain informed consent of one of her parents or guardians, but containing available judicial bypass if minor does not wish to or cannot obtain such consent, did not violate due process clause. Planned Parenthood v. Casey, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674, 1992 U.S. LEXIS 4751 (U.S. 1992).

Provisions of abortion statute requiring informed consent of woman seeking to undergo abortion and twenty-four hour waiting period after giving of consent and before abortion is performed did not violate due process clause. Planned Parenthood v. Casey, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674, 1992 U.S. LEXIS 4751 (U.S. 1992).

Fourteenth Amendment was not violated by state statute prohibiting abortion on minor absent either parental notice, parental consent, judicial bypass, or judicial inaction. Ohio v. Akron Ctr. for Reproductive Health, 497 U.S. 502, 110 S. Ct. 2972, 111 L. Ed. 2d 405, 1990 U.S. LEXIS 3302 (U.S. 1990).

A state statutory provision which authorizes a minor to consent to an abortion without notifying one of her parents, if a juvenile court finds that the minor has proven in an ex parte proceeding, by clear and convincing evidence, that either (1) she has sufficient maturity and information to make an intelligent decision whether to have an abortion without notice, (2) one of her parents has engaged in a pattern of physical, sexual, or emotional abuse against her, or (3) notice is not in her best interests, does not deprive a minor of her liberty interest in obtaining an abortion, under the due process clause of the Federal Constitution's Fourteenth Amendment, by imposing a heightened standard of proof upon the minor, where the minor is assisted by an attorney and a guardian ad litem; the state does not have to bear the burden of proof on the issues of the minor's maturity or best interests, insofar as the clear and convincing evidence standard insures that the judge will take special care in deciding whether the minor's consent to abortion should proceed without parental notification. Ohio v. Akron Ctr. for Reproductive Health, 497 U.S. 502, 110 S. Ct. 2972, 111 L. Ed. 2d 405, 1990 U.S. LEXIS 3302 (U.S. 1990).

An unmarried, unemancipated minor who seeks to obtain an abortion is not deprived of her right, under the due process clause of the Federal Constitution's Fourteenth Amendment, to prove either that she has sufficient maturity and information to make an intelligent decision whether to have an abortion, or that parental notice would not be in her best interests, by a state statute generally prohibiting any person from performing an abortion on such a minor absent notice to one of the minor's parents, but allowing a juvenile court to authorize the minor's consent, where the minor has to choose among three pleading forms, one of which alleges her maturity only, the second of which alleges her best interests only, and the third of which alleges both her maturity and her best interests; even assuming that such pleading scheme could produce some initial confusion because few minors would have counsel when pleading, such procedure is simple and straightforward, does not deprive the minor of an opportunity to prove her case, and thus, on its face, satisfies the dictates of minimal due process, where (1) it seems unlikely that the state courts would treat a minor's choice of complaint form without due care and understanding for her unrepresented status, and (2) the minor does not make a binding election by the initial choice of pleading form and can move for leave to amend the pleadings upon receiving appointed counsel after filing the complaint. Ohio v. Akron Ctr. for Reproductive Health, 497 U.S. 502, 110 S. Ct. 2972, 111 L. Ed. 2d 405, 1990 U.S. LEXIS 3302 (U.S. 1990).

State's two-parent notification requirement for minor's abortion, without judicial bypass provision, did not reasonably further any legitimate state interest, therefore violated Federal Constitution, whereas with judicial bypass such requirement would be valid. Hodgson v. Minnesota, 497 U.S. 417, 110 S. Ct. 2926, 111 L. Ed. 2d 344, 1990 U.S. LEXIS 3303 (U.S. 1990).

A state may, consistent with the Federal Constitution, provide by statute that, except under certain circumstances, an unemancipated minor's physician or an agent must give written notice, either by delivery personally to the parents or by certified mail, to both of the minor's parents before an abortion is performed on the minor, but that a court of competent jurisdiction shall authorize the abortion to proceed without such notice if the court determines that (1) the minor is mature and capable of giving informed consent, or (2) an abortion without notice to both parents would be in the minor's best interest. Hodgson v. Minnesota, 497 U.S. 417, 110 S. Ct. 2926, 111 L. Ed. 2d 344, 1990 U.S. LEXIS 3303 (U.S. 1990).

State statute requiring that all second trimester abortions be performed in general acute care facilities is unconstitutional, since it unreasonably infringes upon women's constitutional right to obtain abortion; however, requirements that pathology report be made, that minor secure parental or judicial consent, and that second physician be present are constitutional. Planned Parenthood Ass'n v. Ashcroft, 462 U.S. 476, 103 S. Ct. 2517, 76 L. Ed. 2d 733, 1983 U.S. LEXIS 64 (U.S. 1983).

City ordinance requiring all second trimester abortions to be performed in hospital violates due process clause, and provisions of ordinance dealing with parental consent, informed consent, 24-hour waiting period, and disposal of fetal remains are unconstitutional. City of Akron v. Akron Ctr. for Reproductive Health, 462 U.S. 416, 103 S. Ct. 2481, 76 L. Ed. 2d 687, 1983 U.S. LEXIS 63 (U.S. 1983), overruled in part, Planned Parenthood v. Casey, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674, 1992 U.S. LEXIS 4751 (U.S. 1992).

RESEARCH REFERENCES

ALR.

Right of minor to have abortion performed without parental consent, 42 A.L.R.3d 1406.

Woman's right to have abortion without consent of, or against objections of, child's father. 62 A.L.R.3d 1097.

Requisites and conditions of judicial consent to minor's abortion. 23 A.L.R.4th 1061.

Validity, construction, and application of statutes requiring parental notification of or consent to minor's abortion. 77 A.L.R.5th 1.

Provision of family planning services under Title X of Public Health Service Act (42 USCS secs. 300-300a-8) and implementing regulations. 71 A.L.R. Fed. 961.

Am. Jur.

1 Am. Jur. 2d, Abortion and Birth Control §§ 1 et seq.

CJS.

1 C.J.S., Abortion and Birth Control
Family Planning §§ 4-35.

Lawyers' Edition.

Supreme Court's views as to validity of laws restricting or prohibiting sale or distribution to minors of particular types of goods or services otherwise available to adults. 52 L. Ed. 2d 892.

§ 41-41-55. Applicability of provisions; court proceedings; standards for waiver of consent requirement.

(1) The requirements and procedures under Sections 41-41-51 through 41-41-63 shall apply and are available to minors whether or not they are residents of this state.

(2) The minor may participate in proceedings in the court on her own behalf. The court shall advise her that she has a right to court-appointed counsel and shall provide her with such counsel upon her request or if she is not already adequately represented.

(3) Court proceedings under this section shall be confidential and anonymous and shall be given such precedence over other pending matters as is necessary to insure that the court may reach a decision promptly, but in no

case shall the court fail to rule within seventy-two (72) hours of the time the application is filed. If for any reason the court fails to rule within seventy-two (72) hours of the time the application is filed, the minor may proceed as if the consent requirement of Section 41-41-53 has been waived.

(4) Consent shall be waived if the court finds by clear and convincing evidence either:

(a) That the minor is mature and well-informed enough to make the abortion decision on her own; or

(b) That performance of the abortion would be in the best interests of the minor.

(5) A court that conducts proceedings under this section shall issue written and specific factual findings and legal conclusions supporting its decision and shall order that a confidential record of the evidence be maintained.

(6) An expedited confidential and anonymous appeal shall be available to any minor to whom the court denies a waiver of consent. The Mississippi Supreme Court shall issue promptly such rules and regulations as are necessary to insure that proceedings under Sections 41-41-51 through 41-41-63 are handled in an expeditious, confidential and anonymous manner.

(7) No filing fees shall be required of any minor who avails herself of the procedures provided by this section.

HISTORY:

Laws, 1986, ch. 448, § 3; Laws, 2007, ch. 441, § 1, eff from and after July 1, 2007.

Editor's Notes —

Laws of 2007, ch. 441, §§ 5 and 6 provide:

"SECTION 5. (1) If any provision of Chapter 441, Laws of 2007, is found to be unconstitutional, the provision is severable; and the other provisions of Chapter 441, Laws of 2007 remain effective, except as provided in other sections of Chapter 441, Laws of 2007.

"(2) Nothing in Chapter 441, Laws of 2007, may be construed to repeal, by implication or otherwise, any provision not explicitly repealed.

"(3) If any provision of Chapter 441, Laws of 2007 is ever declared unconstitutional or its enforcement temporarily or permanently restricted or enjoined by judicial order, the provisions of Sections 41-41-31 through 41-41-91, Mississippi Code of 1972, shall be enforced. However, if such temporary or permanent restraining order or injunction is subsequently stayed or dissolved or such declaration vacated or any similar court order otherwise ceases to have effect, all provisions of Chapter 441, Laws of 2007, that are not declared unconstitutional or whose enforcement is not restrained shall have full force and effect.

"(4) Nothing in the provisions of Sections 41-41-31 through 41-41-91, Mississippi Code of 1972, shall be construed to permit any action that is prohibited by Chapter 441, Laws of 2007, and to the extent that any provision of Sections 41-41-31 through 41-41-91, Mississippi Code of 1972, would be so construed, then the provisions of Senate Bill No. 2391, 2007 Regular Session, shall take precedence.

"SECTION 6. Sections 1, 3, 4 and 5 of this act shall take effect from and after July 1, 2007. Section 2 of this act shall take effect and be in force from and after ten (10) days following the date of publication by the Attorney General of Mississippi in the administrative bulletin published by the Secretary of State as provided in Section 25-43-2.101, Mississippi Code of 1972, that the Attorney General has determined that the United States Supreme Court has overruled the decision of *Roe v. Wade*, 410 U.S. 113 (1973), and that it is reasonably probable that Section 2 of this act would be upheld by the court as constitutional."

Cross References —

Provision that a minor may petition the chancery court for a waiver of the consent requirement, see § 41-41-53.

Requirement that a physician who does not comply with this section by reason of a medical emergency must state in the medical record the medical indications on which his judgment was based, see § 41-41-57.

Confidentiality of records and information involving court proceedings conducted pursuant to this section, see § 41-41-61.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Consent not waived.

1. In general.

Racketeer Influenced and Corrupt Organizations (RICO) Act does not require proof that either racketeering enterprise or predicate acts of racketeering were motivated by economic purpose, therefore if abortion protesters-anti-abortion groups, individuals, and coalition of anti-abortion groups-had conspired nationwide to shut down abortion clinics through pattern of racketeering activity, including extortion, use of threatened or actual force, violence or fear, to injury of business and property interests of clinics, then clinics could maintain RICO action against protesters for violating Act. NOW v. Scheidler, 510 U.S. 249, 114 S. Ct. 798, 127 L. Ed. 2d 99, 1994 U.S. LEXIS 1143 (U.S. 1994).

A state abortion statute's provision concerning parental consent, which provision states that except in a medical emergency, an unemancipated woman under 18 years of age may not obtain an abortion unless (1) she and one of her parents or guardians provide informed consent, or (2) if neither a parent nor a guardian provides consent, a court authorizes the performance of an abortion upon a determination that (a) the woman is mature and capable of giving informed consent and has done so, or (b) an abortion would be in her best interest, does not violate the due process clause of the Federal Constitution's Fourteenth Amendment, where the United States Supreme Court's prior decisions have upheld such a parental consent requirement provided that there is an adequate judicial bypass procedure. Planned Parenthood v. Casey, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674, 1992 U.S. LEXIS 4751 (U.S. 1992).

Fourteenth Amendment was not violated by state statute prohibiting abortion on minor absent either parental notice, parental consent, judicial bypass, or judicial inaction. Ohio v. Akron Ctr. for Reproductive Health, 497 U.S. 502, 110 S. Ct. 2972, 111 L. Ed. 2d 405, 1990 U.S. LEXIS 3302 (U.S. 1990).

In order to prevent another person from having an absolute veto power over a minor's decision to have an abortion, a state must, under the Federal Constitution, provide some sort of bypass procedure if it elects to require parental consent. Ohio v. Akron Ctr. for Reproductive Health, 497 U.S. 502, 110 S. Ct. 2972, 111 L. Ed. 2d 405, 1990 U.S. LEXIS 3302 (U.S. 1990).

A state statute's judicial bypass procedure for an unmarried, unemancipated minor who seeks to obtain an abortion without parental notice or parental consent satisfies the requirements of due process under the Federal Constitution's Fourteenth Amendment, where such procedure (1) permits the minor to show that she is sufficiently mature and well enough informed to decide intelligently whether to have an abortion; (2) requires a juvenile court to authorize the minor's consent where the court determines that the abortion is in the minor's best interests and in cases where the minor has shown a pattern of physical, sexual, or emotional abuse; (3) assures the minor's anonymity by providing that (a) the juvenile court shall not notify the minor's parents that she is pregnant or that she wants to have an abortion, and (b) the juvenile court and a state appellate court must maintain the confidentiality of the complaint and all other papers as nonpublic records, which records state employees are prohibited from disclosing under state criminal statutes; and (4) requires (a) the juvenile court to make its decision within 5 "business day[s]" after the minor files her complaint, (b) the appellate court to docket an appeal within 4 "days" after the minor files a notice of appeal, and (c) the appellate court to render a decision within 5 "days" after docketing the appeal. Ohio v. Akron Ctr. for Reproductive Health, 497 U.S. 502, 110 S. Ct. 2972, 111 L. Ed. 2d 405, 1990 U.S. LEXIS 3302 (U.S. 1990).

State's two-parent notification requirement for minor's abortion, without judicial bypass provision, did not reasonably further any legitimate state interest, therefore violated Federal Constitution, whereas with judicial bypass such requirement would be valid. Hodgson v. Minnesota, 497 U.S. 417, 110 S. Ct. 2926, 111 L. Ed. 2d 344, 1990 U.S. LEXIS 3303 (U.S. 1990).

2. Consent not waived.

Chancery court's decision denying an unemancipated minor's petition for waiver of parental consent to an abortion was upheld, where the chancery court did not abuse its discretion in its findings of fact and ultimate conclusions; the chancellor was in the best position to evaluate the maturity level of the minor. In re A. W., 826 So. 2d 1280, 2002 Miss. LEXIS 292 (Miss. 2002).

Minor who was unaware of the medical risks associated with abortion, did not know the name or qualifications of the doctor who would perform the abortion, and was unaware that public assistance could help with the costs of prenatal care, childbirth, and neonatal care, was properly deemed insufficiently mature to have an abortion without parental consent. R. B. v. State, 790 So. 2d 830, 2001 Miss. LEXIS 174 (Miss. 2001).

RESEARCH REFERENCES

ALR.

Right of minor to have abortion performed without parental consent. 42 A.L.R.3d 1406.

Woman's right to have abortion without consent of, or against objections of, child's father. 62 A.L.R.3d 1097.

Requisites and conditions of judicial consent to minor's abortion. 23 A.L.R.4th 1061.

Am. Jur.

1 Am. Jur. 2d, Abortion and Birth Control §§ 1 et seq.

CJS.

1 C.J.S., Abortion and Birth Control Family Planning §§ 4-35.

Lawyers' Edition.

Supreme Court's views as to validity, under Federal Constitution, of abortion laws. 111 L. Ed. 2d 879.

§ 41-41-57. Exception for medical emergency.

Sections 41-41-51 through 41-41-63 shall not apply when, in the best clinical judgment of the physician on the facts of the case before him, a medical emergency exists that so complicates the pregnancy as to require an immediate abortion. A physician who does not comply with Sections 41-41-53 and 41-41-55 by reason of this exception shall state in the medical record of the abortion the medical indications on which his judgment was based.

HISTORY:

Laws, 1986, ch. 448, § 4, eff from and after July 1, 1986.

JUDICIAL DECISIONS

1. In general.

A state abortion statute's provision concerning parental consent, which provision states that except in a medical emergency, an unemancipated woman under 18 years of age may not obtain an abortion unless (1) she and one of her parents or guardians provide informed consent, or (2) if neither a parent nor a guardian provides consent, a court authorizes the performance of an abortion upon a determination that (a) the woman is mature and capable of giving informed consent and has done so, or (b) an abortion would be in her best interest, does not violate the due process clause of the Federal Constitution's Fourteenth Amendment, where the United States Supreme Court's prior decisions have upheld such a parental consent requirement provided that there is an adequate judicial bypass procedure. Planned Parenthood v. Casey, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674, 1992 U.S. LEXIS 4751 (U.S. 1992).

RESEARCH REFERENCES

ALR.

Right of minor to have abortion performed without parental consent. 42 A.L.R.3d 1406.

Woman's right to have abortion without consent of, or against objections of, child's father. 62 A.L.R.3d 1097.

Requisites and conditions of judicial consent to minor's abortion. 23 A.L.R.4th 1061.

Medical malpractice in performance of legal abortion. 69 A.L.R.4th 875.

Am. Jur.

1 Am. Jur. 2d, Abortion and Birth Control §§ 1 et seq.

1 Am. Jur. Pl & Pr Forms (Rev), Abortion, Form 3.1 (complaint, petition, or declaration –

gynecologist's prescription of drug to pregnant woman – forcing pregnant woman to choice of submitting to abortion or of risking birth of congenitally defective child).

CJS.
1 C.J.S., Abortion and Birth Control Family Planning §§ 4-35.

§ 41-41-59. Violation of provisions as prima facie evidence of physician's unprofessional conduct.

If a physician performs an abortion in violation of the provisions of Sections 41-41-51 through 41-41-63 or fails to conform to any requirement of Sections 41-41-51 through 41-41-63, then his action shall be prima facie evidence of unprofessional conduct, subjecting him to action by the State Board of Medical Licensure.

HISTORY:
Laws, 1986, ch. 448, § 5, eff from and after July 1, 1986.

Cross References —
State Board of Medical Licensure generally, see §§ 73-43-1 et seq.

RESEARCH REFERENCES

ALR.
Medical malpractice in performance of legal abortion. 69 A.L.R.4th 875.

Am. Jur.
1 Am. Jur. 2d, Abortion and Birth Control §§ 1 et seq.
61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 65 et seq.
19A Am. Jur. Pl & Pr Forms (Rev), Physicians, Surgeons, and Other Healers, Forms 11-27 (revocation or suspension of licenses).

CJS.
1 C.J.S., Abortion and Birth Control Family Planning §§ 4-35.
1 C.J.S., Abortion and Birth Control; Family Planning §§ 4-27, 29-33, 35.
70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 33-41, 44-48.

§ 41-41-61. Confidentiality of records and information; penalty for disclosure.

(1) Records and information involving court proceedings conducted pursuant to Section 41-41-55 shall be confidential and shall not be disclosed other than to the minor, her attorney and necessary court personnel. Nothing in this subsection shall prohibit the keeping of statistical records and information as long as the anonymity of the minor is in no way compromised.

(2) Any person who shall disclose any records or information made confidential pursuant to subsection (1) of this section shall be guilty of a misdemeanor and upon conviction punished by a fine of not more than One Thousand Dollars ($1,000.00) or imprisonment in the county jail for not more than one (1) year, or both.

HISTORY:
Laws, 1986, ch. 448, § 6, eff from and after July 1, 1986.

Cross References —
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Eight members of Court agreed that provisions of state abortion statute requiring facilities providing abortion services to abide certain reporting and record-keeping requirements which do not include disclosure of identities of women who have undergone abortions, did not violate due process clause, at least except for provision requiring reporting of failure to provide spousal notice. Five members of Court agreed that provision requiring reporting of failure to provide spousal notice violated due process clause. Planned Parenthood v. Casey, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674, 1992 U.S. LEXIS 4751 (U.S. 1992).

§ 41-41-63. Severability of provisions.

If any provision, word, phrase or clause of Sections 41-41-51 through 41-41-63 or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions, words, phrases, clauses or application of Sections 41-41-51 through 41-41-63 which can be given effect without the invalid provision, word, phrase, clause or application, and to this end the provisions, words, phrases and clauses of Sections 41-41-51 through 41-41-63 are declared to be severable.

HISTORY:

Laws, 1986, ch. 448, § 7, eff from and after July 1, 1986.

PARTIAL-BIRTH ABORTION BAN ACT

Sec.	
41-41-71.	Short title.
41-41-73.	Partial-birth abortions prohibited; penalties for violations.

§ 41-41-71. Short title.

Sections 41-41-71 through 41-41-73 may be cited as the Partial-Birth Abortion Ban Act.

HISTORY:

Laws, 1997, ch. 350, § 1, eff from and after July 1, 1997.

Editor's Notes —

Laws of 1997, ch. 350, § 4, provides as follows:

"SECTION 4. If any provision, word, phrase or clause of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions, words, phrases, clauses or applications of this act that can be given effect without the invalid provision, word, phrase, clause or application and to this end, the provisions, words, phrases and clauses of this act are declared to be severable."

Comparable Laws from other States —

Alabama Code, §§ 26-23-1 et seq.

Arkansas Code Annotated, §§ 5-61-201 et seq.

Florida Annotated Statutes, §§ 782.32 through 782.34.

Georgia Code Annotated, § 16-12-144.

Louisiana Annotated Statutes, §§ 14:32-10, 14:32-11.

South Carolina Annotated, § 44-41-85.

Tennessee Code Annotated, § 39-15-209.

RESEARCH REFERENCES

ALR.

Validity, construction, and application of statutory restrictions on partial birth abortions. 76 A.L.R.5th 637.

Am. Jur.
1 Am. Jur. 2d, Abortion and Birth Control § 60.

§ 41-41-73. Partial-birth abortions prohibited; penalties for violations.

(1) Any physician who knowingly performs a partial-birth abortion and thereby kills a human fetus shall be guilty of a felony and, upon conviction thereof, shall be fined not more than Twenty-five Thousand Dollars ($25,000.00) or imprisoned in the State Penitentiary for not more than two (2) years, or both. This subsection shall not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury if no other medical procedure would suffice for that purpose.

(2)(a) As used in this section, "partial-birth abortion" means an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.

(b) As used in this section, "physician" means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State of Mississippi. However, any individual who is not a physician but who nevertheless directly performs a partial-birth abortion shall be subject to the provisions of this section.

(3)(a) The husband of a mother at the time she receives a partial-birth abortion procedure, and if the mother has not attained the age of eighteen (18) years at the time of the abortion, the mother's parents may in a civil action obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion.

(b) Such relief shall include:

(i) Money damages for all injuries, psychological and physical, occasioned by the violation of this section; and

(ii) Statutory damages equal to three (3) times the cost of the partial-birth abortion.

(4) A woman upon whom a partial-birth abortion is performed may not be prosecuted under this section for a conspiracy to violate this section.

HISTORY:
Laws, 1997, ch. 350, § 2, eff from and after July 1, 1997.

Editor's Notes —
Laws, 1997, ch. 350, § 4, provides as follows: "SECTION 4. If any provision, word, phrase or clause of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions, words, phrases, clauses or applications of this act that can be given effect without the invalid provision, word, phrase, clause or application and to this end, the provisions, words, phrases and clauses of this act are declared to be severable."

RESEARCH REFERENCES

ALR.
Validity, construction, and application of statutory restrictions on partial birth abortions. 76 A.L.R.5th 637.

Am. Jur.
1 Am. Jur. 2d, Abortion and Birth Control § 60.

ABORTION COMPLICATION REPORTING ACT

Sec.
41-41-75. Short Title.
41-41-76. Definitions.
41-41-77. Physicians to file regular reports to state on patients treated or dying in abortion procedures; confidentiality; sanctions for breach of confidentiality.
41-41-78. Content of reports.
41-41-79. Liability.
41-41-80. Severability.

§ 41-41-75. Short Title.

Sections 41-41-75 through 41-41-80 shall be known and may be cited as the Abortion Complication Reporting Act.

HISTORY:
Laws, 2004, ch. 499, § 1, eff from and after July 1, 2004.

Joint Legislative Committee Note —
Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error. "Sections 41-41-75 through 41-41-80" was substituted for "this act."

§ 41-41-76. Definitions.

As used in Sections 41-41-75 through 41-41-80:

(a) "Abortion" has the meaning as defined in Section 41-41-31.

(b) "Medical treatment" means, but is not limited to, hospitalization, laboratory tests, surgery or prescription of drugs.

(c) "Department" means the State Department of Health.

HISTORY:
Laws, 2004, ch. 499, § 2, eff from and after July 1, 2004.

Joint Legislative Committee Note —
Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error. "Sections 41-41-75 through 41-41-80" was substituted for "this act."

§ 41-41-77. Physicians to file regular reports to state on patients treated or dying in abortion procedures; confidentiality; sanctions for breach of confidentiality.

(1) A physician shall file a written report with the State Department of Health regarding each patient who comes under the physician's professional care and requires medical treatment or suffers death that the attending physician has a reasonable basis to believe is a primary, secondary, or tertiary result of an induced abortion.

(2) These reports shall be submitted within thirty (30) days of the discharge or death of the patient treated for the complication.

(3) The department shall summarize aggregate data from the reports

required under this section for purposes of inclusion into the annual Vital Statistics Report.

(4) The department shall develop and distribute or make available online in a downloadable format a standardized form for the report required under this section.

(5) The department shall communicate this reporting requirement to all medical professional organizations, licensed physicians, hospitals, emergency rooms, abortion facilities, Department of Health clinics and ambulatory surgical facilities operating in the state.

(6) The department shall destroy each individual report required by this section and each copy of the report after retaining the report for five (5) years after the date the report is received.

(7) The report required under this section shall not contain the name of the woman, common identifiers such as her social security number or motor vehicle operator's license number or other information or identifiers that would make it possible to identify in any manner or under any circumstances an individual who has obtained or seeks to obtain an abortion. A state agency shall not compare data in an electronic or other information system file with data in another electronic or other information system that would result in identifying in any manner or under any circumstances an individual obtaining or seeking to obtain an abortion. Statistical information that may reveal the identity of a woman obtaining or seeking to obtain an abortion shall not be maintained.

(8) The department or an employee of the department shall not disclose to a person or entity outside the department the reports or the contents of the reports required under this section in a manner or fashion as to permit the person or entity to whom the report is disclosed to identify in any way the person who is the subject of the report.

(9) Disclosure of confidential identifying information in violation of this section shall constitute a felony which, upon conviction, shall be punished by imprisonment in the State Penitentiary for not more than three (3) years, or a fine of not more than Five Thousand Dollars ($5,000.00), or both.

HISTORY:

Laws, 2004, ch. 499, § 3, eff from and after July 1, 2004.

Cross References —

Imposition and collection of separate laboratory analysis fee in addition to any other assessments and costs imposed by statute on every individual convicted of a felony in a case where Crime Laboratory provided forensic science or laboratory services in connection with the case, see § 45-1-29.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

§ 41-41-78. Content of reports.

(1) Each report of medical treatment following abortion required under Section 41-41-77 shall contain the following information:

(a) The age and race of the patient;

(b) The characteristics of the patient, including residency status, county of residence, marital status, education, number of previous pregnancies, number of stillbirths, number of living children and number of previous abortions;

(c) The date the abortion was performed and the method used if known;

(d) The type of facility where the abortion was performed;

(e) The condition of the patient that led to treatment, including, but not limited to, pelvic infection, hemorrhage, damage to pelvic organs, renal failure, metabolic disorder, shock, embolism, coma or death.

(f) The amount billed to cover the treatment of the complication, including whether the treatment was billed to Medicaid, insurance, private pay or other method. This should include charges for physician, hospital, emergency room, prescription or other drugs, laboratory tests and any other costs for the treatment rendered.

(g) The charges are to be coded with IDC-9 classification numbers in such a way as to distinguish treatment following induced abortions from treatments following ectopic or molar pregnancies.

(2) Nothing in Sections 41-41-75 through 41-41-80 shall be construed as an instruction to discontinue collecting data currently being collected.

HISTORY:
Laws, 2004, ch. 499, § 4, eff from and after July 1, 2004.

Joint Legislative Committee Note —
Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in (1) and (2). "Section 41-41-77" was substituted for "Section 4 of this act" in (1), and "Sections 41-41-75 through 41-41-80" was substituted for "this act" in (2).

§ 41-41-79. Liability.

Willful violation of the provisions of Sections 41-41-75 through 41-41-80 shall constitute a misdemeanor and shall be punishable as provided for by law, except that disclosure of confidential identifying information shall constitute a felony as provided in subsection (9) of Section 41-41-77. No physician or hospital, its officers, employees or medical and nursing personnel practicing in the hospital shall be civilly liable for violation of the provisions of Sections 41-41-75 through 41-41-80, except to the extent of liability for actual damages in a civil action for willful or reckless and wanton acts or omissions constituting that violation. However, that liability shall be subject to any immunities or limitations of liability or damages provided by law.

HISTORY:
Laws, 2004, ch. 499, § 5, eff from and after July 1, 2004.

Joint Legislative Committee Note —
Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error. "Sections 41-41-75 through 41-41-80" was substituted for "this act" twice.

Cross References —
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

§ 41-41-80. Severability.

The provisions of Sections 41-41-75 through 41-41-80 are declared to be severable, and if any provision, word, phrase, or clause of Sections 41-41-75 through 41-41-80 or the application thereof to any person is held invalid, the invalidity shall not affect the validity of the remaining portions of Sections 41-41-75 through 41-41-80.

HISTORY:
Laws, 2004, ch. 499, § 6, eff from and after July 1, 2004.

Joint Legislative Committee Note —
Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error. "Sections 41-41-75 through 41-41-80" was substituted for "this act" throughout the section.

Editor's Notes —
"The reference to 'Section 4 of this act' in Section 4 of Chapter 499, Laws of 2004 (codified as Section 41-41-78) is incorrect. That reference should have been to Section 3 of Chapter 499, which was codified as Section 41-41-77. Consequently, that reference in Section 41-41-78 has been changed to correctly refer to Section 41-41-77 at the direction of the Co-Counsel of The Joint Legislative Committee on Compilation, Revision and Publication of Legislation."

PUBLIC FUNDING OF ABORTIONS

Sec.
41-41-91. Use of public funds for abortions prohibited; exceptions.

§ 41-41-91. Use of public funds for abortions prohibited; exceptions.

Notwithstanding any other provision of law to the contrary, no public funds that are made available to any institution, board, commission, department, agency, official, or employee of the State of Mississippi, or of any local political subdivision of the state, whether those funds are made available by the government of the United States, the State of Mississippi, or a local governmental subdivision, or from any other public source, shall be used in any way for, to assist in, or to provide facilities for abortion, except:

(a) When the abortion is medically necessary to prevent the death of the mother; or

(b) When the abortion is being sought to terminate a pregnancy resulting from an alleged act of rape or incest; or

(c) When there is a fetal malformation that is incompatible with the baby being born alive.

HISTORY:
Laws, 2002, ch. 604, § 1, eff from and after July 1, 2002.

JUDICIAL DECISIONS

1. Limitation of right.
Since it was agreed that under Miss. Code Ann. § 41-41-91 public hospitals in Mississippi were prohibited by law from performing abortions except in extremely limited circumstances, the amendment to Miss. Code Ann. § 41-75-1, requiring licensure as an ambulatory surgery facility for performance of second trimester abortions effectively made abortions after the first trimester unavailable to women in Mississippi; it was a substantial obstacle to a woman's choice and would likely not survive Fourteenth Amendment scrutiny, thus, a preliminary injunction issued. Jackson Womens Health Org., Inc. v. Amy, 330 F. Supp. 2d 820, 2004 U.S. Dist. LEXIS 16057 (S.D. Miss. 2004).

RESEARCH REFERENCES

ALR.
Validity of state statutes and regulations limiting or restricting public funding for abortions sought by indigent women. 118 A.L.R.5th 463.

FEDERAL ABORTION-MANDATE OPT-OUT ACT

Sec.
41-41-95. Title.
41-41-97. Legislative findings and purpose.
41-41-99. Opt-out.

§ 41-41-95. Title.

Sections 41-41-95 through 41-41-99 may be known and cited as the "Federal Abortion-Mandate Opt-Out Act."

HISTORY:
Laws, 2010, ch. 563, § 1, eff from and after passage (approved May 24, 2010).

§ 41-41-97. Legislative findings and purpose.

(1) The Legislature of the State of Mississippi finds that under Section 1303 of the federal Patient Protection and Affordable Care Act, states are explicitly permitted to pass laws prohibiting qualified health plans offered through an exchange in their state from offering abortion coverage.

(2) It is the purpose of Sections 41-41-95 through 41-41-99 to affirmatively opt out of allowing qualified health plans that cover abortions to participate in exchanges within the State of Mississippi.

HISTORY:
Laws, 2010, ch. 563, § 2, eff from and after passage (approved May 24, 2010).

Editor's Notes —
At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, a typographical error in (1) was corrected by inserting the word "under" preceding "Section 1303."

§ 41-41-99. Opt-out.

(1) No abortion coverage may be provided by a qualified health plan offered through an exchange created pursuant to the federal Patient Protection and Affordable Care Act within the State of Mississippi.

(2) This limitation shall not apply to an abortion performed (a) when the life of the mother is endangered by a physical disorder, physical illness or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, or (b) when the pregnancy is the result of an alleged act of rape or incest. The physician is required to maintain sufficient documentation in the medical record that supports the medical necessity for the abortion for one of the reasons outlined in this subsection (2).

HISTORY:

Laws, 2010, ch. 563, § 3, eff from and after passage (approved May 24, 2010).

WOMEN'S HEALTH DEFENSE ACT OF 2013

Sec.
41-41-101. Short title.
41-41-103. Legislative findings; purpose.
41-41-105. Definitions.
41-41-107. Providing or prescribing abortion-inducing drug prohibited unless provided or prescribed by physician; requirements for physicians.
41-41-109. Physician report of provision of abortion-inducing drug; report of adverse event.
41-41-111. Penalties for violation.
41-41-113. Remedies; availability; no liability against pregnant women.
41-41-115. Limitations of Sections 41-41-101 through 41-41-117.
41-41-117. Severability.

§ 41-41-101. Short title.

Sections 41-41-101 through 41-41-117 may be known and cited as the "Women's Health Defense Act of 2013."

HISTORY:

Laws, 2013, ch. 551, § 1, eff from and after July 1, 2013.

Editor's Notes —

A former § 41-41-101 [Laws, 1984, ch. 365, § 1; Repealed by Laws, 1998, ch. 542, § 19, effective from and after July 1, 1998] related to declarations and procedures regarding the withdrawal of life-saving mechanisms. For similar present provisions, see § 41-41-201 et seq.

§ 41-41-103. Legislative findings; purpose.

(1) The Legislature finds that:

(a) The use of abortion-inducing drugs presents significant medical risks to women, including, but not limited to, abdominal pain, cramping, vomiting, headache, fatigue, uterine hemorrhage, viral infections, pelvic inflammatory disease, severe bacterial infection and death.

(b) Abortion-inducing drugs are associated with an increased risk of complications relative to surgical abortion. The risk of complications increases with increasing gestational age.

(c) In July 2011, the FDA reported two thousand two hundred seven (2,207) adverse events in the United States after women used abortion-inducing drugs for the termination of pregnancy. Among those were fourteen (14) deaths, six hundred twelve (612) hospitalizations, three hundred thirty-nine (339) blood transfusions, and two hundred fifty-six (256) infections (including forty-eight (48) "severe infections").

(d) Medical evidence demonstrates that women who use abortion-inducing drugs incur more complications than those who have surgical abortions.

(2) Based on the findings in subsection (1) of this section, it is the purpose of Sections 41-41-101 through 41-41-117 to:

(a) Protect women from the dangerous and potentially deadly use of abortion-inducing drugs when administration of the drugs does not meet the standard of care; and

(b) Ensure that physicians meet the standard of care when giving, selling, dispensing, administering or otherwise providing or prescribing abortion-inducing drugs.

HISTORY:

Laws, 2013, ch. 551, § 2, eff from and after July 1, 2013.

Editor's Notes —

A former § 41-41-103 [Laws, 1984, ch. 365, § 2; Repealed by Laws, 1998, ch. 542, § 19, effective from and after July 1, 1998] related to declarations and procedures regarding the withdrawal of life-saving mechanisms. For similar present provisions, see § 41-41-201 et seq.

§ 41-41-105. Definitions.

As used in Sections 41-41-101 through 41-41-117, the following terms shall have the meanings ascribed in this section unless the context indicates otherwise:

(a) "Abortion-inducing drug" means a medicine, drug or any other substance prescribed or dispensed with the intent of terminating the clinically diagnosable pregnancy of a woman to cause the death of the unborn child. This includes the use of drugs known to have abortion-inducing properties, which are prescribed specifically with the intent of causing an abortion. Use of those drugs to induce abortion is also known as "medical abortion." This definition does not apply to drugs that may be known to cause an abortion but are prescribed for other medical indications (e.g., chemotherapeutic agents and diagnostic drugs).

(b) "Abortion" means the act of using or prescribing any instrument, medicine, drug or any other substance, device or means with the intent to terminate the clinically diagnosable pregnancy of a woman to cause the death of the unborn child. That use, prescription or means is not an abortion if done with the intent to:

(i) Save the life of the mother;

(ii) Save the life or preserve the health of the unborn child;

(iii) Remove a dead unborn child caused by spontaneous abortion;

(iv) Remove an ectopic pregnancy;

(v) Prevent hemorrhaging by the pregnant woman; or

(vi) Treat a maternal disease or illness other than pregnancy for which the prescribed drug is indicated.

(c) "Department" means the State Department of Health.

(d) "LMP" or "gestational age" means the time that has elapsed since the first day of the woman's last menstrual period.

(e) "Physician" means any medical doctor (M.D.) or osteopathic doctor (D.O.) licensed to practice medicine in this state.

(f) "Pregnant" or "pregnancy" means the female reproductive condition of having an unborn child in the woman's uterus.

(g) "Unborn child" means the offspring of human beings from conception until birth.

HISTORY:

Laws, 2013, ch. 551, § 3, eff from and after July 1, 2013.

Editor's Notes —

A former § 41-41-105 [Laws, 1984, ch. 365, § 3; Repealed by Laws, 1998, ch. 542, § 19, effective from and after July 1, 1998] related to declarations and procedures regarding the withdrawal of life-saving mechanisms. For similar present provisions, see § 41-41-201 et seq.

§ 41-41-107. Providing or prescribing abortion-inducing drug prohibited unless provided or prescribed by physician; requirements for physicians.

(1) It shall be unlawful to knowingly give, sell, dispense, administer or otherwise provide or prescribe any abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion in that pregnant woman, or enabling another person to induce an abortion in a pregnant woman, unless the person who gives, sells, dispenses, administers or otherwise provides or prescribes the abortion-inducing drug is a physician, and the provision or prescription of the abortion-inducing drug satisfies the standard of care.

(2) Because the failure and complications from medical abortion increase with increasing gestational age, because the physical symptoms of medical abortion can be identical to the symptoms of ectopic pregnancy, and because abortion-inducing drugs do not treat ectopic pregnancies but rather are contraindicated in ectopic pregnancies, the physician giving, selling, dispensing, administering or otherwise providing or prescribing the abortion-inducing drug must first physically examine the woman and document in the woman's medical chart the gestational age and intrauterine location of the pregnancy before giving, selling, dispensing, administering or otherwise providing or prescribing the abortion-inducing drug.

(3) When any drug or chemical is used for the purpose of inducing an abortion, the drug or chemical must be administered in the same room and in the physical presence of the physician who gave, sold, dispensed or otherwise provided or prescribed the drug or chemical to the patient.

(4) Every pregnant woman to whom a physician gives, sells, dispenses, administers or otherwise provides or prescribes any abortion-inducing drug shall be provided with a copy of the drug's final printed label or FPL.

(5) If the physician giving, selling, dispensing, administering or otherwise providing or prescribing any abortion-inducing drug is unable to provide follow-up care, the physician must have a signed contract with a physician who agrees to provide follow-up care and produce that signed contract if requested by the patient or by the department. The contract shall include the name and contact information of the follow-up physician. The contract follow-up physician must have active hospital admitting privileges and gynecological/surgical privileges.

(6) The physician giving, selling, dispensing, administering or otherwise providing or prescribing any abortion-inducing drug, or an agent of the physician, must schedule a follow-up visit for the woman at approximately fourteen (14) days after administration of the abortion-inducing drug to provide treatment that meets the standard of care.

HISTORY:

Laws, 2013, ch. 551, § 4, eff from and after July 1, 2013.

Editor's Notes —

A former § 41-41-107 [Laws, 1984, ch. 365, § 4; Repealed by Laws, 1998, ch. 542, § 19, effective from and after July 1, 1998] related to declarations and procedures regarding the withdrawal of life-saving mechanisms. For similar present provisions, see § 41-41-201 et seq.

§ 41-41-109. Physician report of provision of abortion-inducing drug; report of adverse event.

(1) If a physician provides an abortion-inducing drug to another for the purpose of inducing an abortion as authorized in Section 41-41-107:

(a) The physician shall report that action to the department; and

(b) If the physician knows that the woman who uses the abortion-inducing drug for the purpose of inducing an abortion experiences, during or after the use, an adverse event, the physician shall provide a written report of the serious event to the FDA via the Medwatch Reporting System.

(2) For the purposes of this section, "adverse event" shall be defined according to the FDA criteria given in the Medwatch Reporting System.

HISTORY:

Laws, 2013, ch. 551, § 5, eff from and after July 1, 2013.

Editor's Notes —

A former § 41-41-109 [Laws, 1984, ch. 365, § 5; Repealed by Laws, 1998, ch. 542, § 19, effective from and after July 1, 1998] related to declarations and procedures regarding the withdrawal of life-saving mechanisms. For similar present provisions, see § 41-41-201 et seq.

§ 41-41-111. Penalties for violation.

(1) A person who intentionally, knowingly or recklessly violates any provision of Sections 41-41-101 through 41-41-117 is guilty of a misdemeanor.

(2) No criminal penalty may be assessed against the pregnant woman upon whom the drug-induced abortion is performed.

HISTORY:

Laws, 2013, ch. 551, § 6, eff from and after July 1, 2013.

Editor's Notes —

A former § 41-41-111 [Laws, 1984, ch. 365, § 6; Repealed by Laws, 1998, ch. 542, § 19, effective from and after July 1, 1998] related to declarations and procedures regarding the withdrawal of life-saving mechanisms. For similar present provisions, see § 41-41-201 et seq.

Cross References —

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 41-41-113. Remedies; availability; no liability against pregnant women.

(1) All remedies under the statutory laws of this state are available if there is failure to comply with the requirements of Sections 41-41-101 through 41-41-117.

(2) No civil liability may be assessed against the pregnant woman upon whom the drug-induced abortion is performed.

(3) In any legal action for failure to comply with the requirements of

Sections 41-41-101 through 41-41-117, the court, when requested, shall allow a woman to proceed using solely her initials or a pseudonym and may close any proceedings in the case and enter other protective orders to preserve the privacy of the woman upon whom the drug-induced abortion was performed.

HISTORY:

Laws, 2013, ch. 551, § 7, eff from and after July 1, 2013.

Editor's Notes —

A former § 41-41-113 [Laws, 1984, ch. 365, § 7; Repealed by Laws, 1998, ch. 542, § 19, effective from and after July 1, 1998] related to declarations and procedures regarding the withdrawal of life-saving mechanisms. For similar present provisions, see § 41-41-201 et seq.

§ 41-41-115. Limitations of Sections 41-41-101 through 41-41-117.

(1) Nothing in Sections 41-41-101 through 41-41-117 shall be construed as creating or recognizing a right to abortion.

(2) It is not the intention of Sections 41-41-101 through 41-41-117 to make lawful an abortion that is currently unlawful.

HISTORY:

Laws, 2013, ch. 551, § 8, eff from and after July 1, 2013.

Editor's Notes —

A former § 41-41-115 [Laws, 1984, ch. 365, § 8; Repealed by Laws, 1998, ch. 542, § 19, effective from and after July 1, 1998] related to declarations and procedures regarding the withdrawal of life-saving mechanisms. For similar present provisions, see § 41-41-201 et seq.

§ 41-41-117. Severability.

Any provision of Sections 41-41-101 through 41-41-117 that is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless the holding is one of utter invalidity or unenforceability, in which event the provision shall be deemed severable from Sections 41-41-101 through 41-41-117 and shall not affect the remainder of Sections 41-41-101 through 41-41-117 or the application of the provision to other persons not similarly situated or to other dissimilar circumstances.

HISTORY:

Laws, 2013, ch. 551, § 9, eff from and after July 1, 2013.

Editor's Notes —

A former § 41-41-117 [Laws, 1984, ch. 365, § 9; Repealed by Laws, 1998, ch. 542, § 19, effective from and after July 1, 1998] related to declarations and procedures regarding the withdrawal of life-saving mechanisms. For similar present provisions, see § 41-41-201 et seq.

WITHDRAWAL OF LIFE-SAVING MECHANISMS [REPEALED]

Sec.
41-41-119 and 41-41-121. Repealed.

§§ 41-41-119 and 41-41-121. Repealed.

Repealed by Laws, 1998, ch. 542, § 19, eff from and after July 1, 1998.

§§ 41-41-119 and 41-41-121 [Laws, 1984, ch. 365, §§ 10 and 11]

Editor's Notes —

Former §§ 41-41-119 and 41-41-121 (along with former §§ 41-41-101 through 41-41-117) related to declarations and procedures regarding the withdrawal of life-saving mechanisms. For similar present provisions, see § 41-41-201 et seq.

WOMEN'S HEALTH PROTECTION AND PREBORN PAIN ACT

Sec.

41-41-131. Short title.
41-41-133. Definitions.
41-41-135. Performing or inducing or attempting to perform or induce abortion before physician determines probable gestational age prohibited.
41-41-137. Performing or inducing or attempting to perform or induce abortion if probable gestational age is determined to be twenty or more weeks prohibited.
41-41-139. Abortion to preserve the life of the pregnant woman when probable gestational age of unborn child is twenty or more weeks to be done in manner to provide best opportunity for survival of unborn child.
41-41-141. Exceptions for preservation of life of pregnant woman; exceptions for severe fetal abnormality.
41-41-143. Protection of privacy of woman on whom abortion was performed or induced or attempted to be performed or induced in civil or criminal proceedings.
41-41-145. Construction; constitutional challenge.
41-41-147. Relation to other Mississippi laws regulating or restricting abortions.
41-41-149. Severability.

§ 41-41-131. Short title.

Sections 41-41-131 through 41-41-145 may be cited as the Women's Health Protection and Preborn Pain Act.

HISTORY:

Laws, 2014, ch. 506, § 2, eff from and after July 1, 2014.

Editor's Notes —

Laws of 2014, ch. 506, § 1 provides:

"SECTION 1. (1) The findings indicate that:

"(a) Abortion can cause serious physical and psychological (both short- and long-term) complications for women, including, but not limited to: uterine perforation, uterine scarring, cervical perforation or other injury, infection, bleeding, hemorrhage, blood clots, failure to actually terminate the pregnancy, incomplete abortion (retained tissue), pelvic inflammatory disease, endometritis, missed ectopic pregnancy, cardiac arrest, respiratory arrest, renal failure, metabolic disorder, shock, embolism, coma, placenta previa in subsequent pregnancies, preterm birth in subsequent pregnancies, free fluid in the abdomen, organ damage, adverse reactions to anesthesia and other drugs, psychological or emotional complications such as depression, anxiety, sleeping disorders, and death;

"(b) Abortion has a higher medical risk when the procedure is performed later in pregnancy. Compared to an abortion at eight (8) weeks gestation or earlier, the relative risk increases exponentially at higher gestations. *L. Bartlett et al., risk factors for legal induced abortion-related mortality in the United States, Obstetrics Gynecology 103(4):729 (2004);*

"(c) In fact, the incidence of major complications is highest after twenty (20) weeks gestation. *J. Pregler A. DeCherney, Women's Health; Principles and Clinical Practice 232 (2002);*

"(d) According to the Alan Guttmacher Institute, the risk of death associated with abortion increases with the length of pregnancy, from one (1) death for every one million (1,000,000) abortions at or before eight (8) weeks gestation to one (1) per twenty-nine thousand (29,000) abortions at sixteen (16) to twenty (20) weeks and one (1) per eleven thousand (11,000) abortions at twenty-one (21) or more weeks (citing *L. Bartlett et al., risk factors for legal induced abortion-related mortality in the United States, Obstetrics Gynecology 103(4):729-737 (2004));*

"(e) After the first trimester, the risk of hemorrhage from an abortion, in particular, is greater, and the resultant complications may require a hysterectomy, other reparative surgery, or a blood transfusion;

"(f) The State of Mississippi has a legitimate concern for the public's health and safety. *Williamson v. Lee Optical,* 348 U.S. 483, 486 (1985);

"(g) The State of Mississippi "has legitimate interests from the outset of pregnancy in protecting the health of women." *Planned Parenthood of Southeastern Pennsylvania v. Casey,* 505 U.S. 833.847 (1992). More specifically, the State of Mississippi "has a legitimate concern with the health of women who undergo abortions." *Akron v. Akron Ctr. for Reproductive Health, Inc.,* 462 U.S. 416, 428-29 (1983);

"(h) In addition, substantial medical evidence recognizes that an unborn child is capable of experiencing pain by not later than twenty (20) weeks gestational age:

"(i) Pain receptors (nociceptors) are present throughout the unborn child's entire body and nerves link these receptors to the brain's thalamus and subcortical plate by no later than twenty (20) weeks.

"(ii) By eight (8) weeks after conception, the unborn child reacts to touch. After twenty (20) weeks, the unborn child reacts to stimuli that would be recognized as painful if applied to an adult human, for example, by recoiling.

"(iii) In the unborn child, application of such painful stimuli is associated with significant increases in stress hormones known as the stress response.

"(iv) Subjection to such painful stimuli is associated with long-term harmful neurodevelopmental effects, such as altered pain sensitivity and, possibly, emotional, behavioral, and learning disabilities later in life.

"(v) For the purposes of surgery on unborn children, fetal anesthesia is routinely administered and is associated with a decrease in stress hormones compared to their level when painful stimuli are applied without such anesthesia.

"(vi) The position, asserted by some medical experts, that the unborn child is incapable of experiencing pain until a point later in pregnancy than twenty (20) weeks after conception predominately rests on the assumption that the ability to experience pain depends on the cerebral cortex and requires nerve connections between the thalamus and the cortex. However, recent medical research and analysis, especially since 2007, provides strong evidence for the conclusion that a functioning cortex is not necessary to experience pain.

"(vii) Substantial evidence indicates that children born missing the bulk of the cerebral cortex, those with hydranencephaly, nevertheless experience pain.

"(viii) In adults, stimulation or ablation of the cerebral cortex does not alter pain perception, while stimulation or ablation of the thalamus does.

"(ix) Substantial evidence indicates that structures used for pain processing in early development differ from those of adults, using different neural elements available at specific times during development, such as the subcortical plate, to fulfill the role of pain processing.

"(x) The position, asserted by some medical experts, that the unborn child remains in a coma-like sleep state that precludes the unborn child experiencing pain is inconsistent with the documented reaction of unborn children to painful stimuli and with the experience of fetal surgeons who have found it necessary to sedate the unborn child with anesthesia to prevent the unborn child from thrashing about in reaction to invasive surgery.

"(i) The state has a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that these children are capable of feeling pain;

"(j) The compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that an unborn child is capable of feeling pain is intended to be separate from and independent of the compelling state interest in protecting the lives of unborn children from the stage of viability, and neither state interest is intended to replace the other; and

"(k) Restricting elective abortions at or later than twenty (20) weeks gestational age, as provided by Sections 41-41-131 through 41-41-145, does not impose an undue burden or a substantial obstacle on a woman's ability to have an abortion because:

"(i) The State of Mississippi has an interest in protecting maternal health from the outset of pregnancy, and women face substantial risks from abortion as gestation increases;

"(ii) The woman has adequate time to decide whether to have an abortion in the first twenty (20) weeks gestation; and

"(iii) Sections 41-41-131 through 41-41-145 do not apply to abortions that are necessary to avert the death or substantial and irreversible physical impairment of a major bodily function of the pregnant woman or abortions that are performed on unborn children with severe fetal abnormalities.

"(2) The Legislature intends that every application of Sections 41-41-131 through 41-41-145 to every individual woman shall be severable from each other. In the unexpected event that the application of Sections 41-41-131 through 41-41-145 is found to impose an impermissible undue burden on any pregnant woman or group of pregnant women, the application of Sections 41-41-131 through 41-41-145 to those women shall be severed from the remaining applications of Sections 41-41-131 through 41-41-145 that do not impose an undue burden, and those remaining applications shall remain in force and unaffected, consistent with Section 41-41-149."

§ 41-41-133. Definitions.

As used in Sections 41-41-131 through 41-41-145:

(a) "Abortion" means the use or prescription of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth or to remove a dead fetus.

(b) "Gestational age" means the time that has elapsed since the first day of the woman's last menstrual period as determined using methods consistent with standard medical practice in the community.

(c) "Severe fetal abnormality" means a life-threatening physical condition that, in reasonable medical judgment, regardless of the provision of life-saving medical treatment, is incompatible with life outside the womb.

(d) "Major bodily function" includes, but is not limited to, functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.

HISTORY:

Laws, 2014, ch. 506, § 3, eff from and after July 1, 2014.

§ 41-41-135. Performing or inducing or attempting to perform or induce abortion before physician determines probable gestational age prohibited.

Except as otherwise provided by Section 41-41-141, a physician may not perform, or induce or attempt to perform or induce an abortion without, before the procedure:

(a) Making a determination of the probable gestational age of the unborn child; or

(b) Possessing and relying on a determination of the probable gestational age of the unborn child made by another physician. The physician making such a determination must do so in accordance with reasonable medical judgment.

HISTORY:

Laws, 2014, ch. 506, § 4, eff from and after July 1, 2014.

§ 41-41-137. Performing or inducing or attempting to perform or induce abortion if probable gestational age is determined to be twenty or more weeks prohibited.

Except as otherwise provided by Section 41-41-141, a person may not perform or induce or attempt to perform or induce an abortion on a woman if it has been determined, by the physician performing, inducing, or attempting to perform or induce the abortion or by another physician on whose determination that physician relies, that the probable gestational age of the unborn child is twenty (20) or more weeks.

HISTORY:
Laws, 2014, ch. 506, § 5, eff from and after July 1, 2014.

§ 41-41-139. Abortion to preserve the life of the pregnant woman when probable gestational age of unborn child is twenty or more weeks to be done in manner to provide best opportunity for survival of unborn child.

(1) This section applies only to an abortion authorized under Section 41-41-141(1) in which:

(a) The probable gestational age of the unborn child is twenty (20) or more weeks; or

(b) The probable gestational age of the unborn child has not been determined but could reasonably be twenty (20) or more weeks.

(2) A physician performing or inducing an abortion under subsection (1) of this section shall terminate the pregnancy in the manner that, in the physician's reasonable medical judgment, provides the best opportunity for the unborn child to survive.

HISTORY:
Laws, 2014, ch. 506, § 6, eff from and after July 1, 2014.

§ 41-41-141. Exceptions for preservation of life of pregnant woman; exceptions for severe fetal abnormality.

(1) The prohibitions and requirements under Sections 41-41-135, 41-41-137 and 41-41-139(2) do not apply if there exists a condition in which an abortion is necessary to preserve the life of the pregnant woman whose life is endangered by a physical disorder, physical illness or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, or when continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function (as specifically defined in paragraph (d) of Section 41-41-133) of the pregnant woman.

(2) The prohibitions and requirements under Sections 41-41-135, 41-41-137 and 41-41-139(2) do not apply to an abortion performed or induced on an unborn child who has a severe fetal abnormality if the mother is informed twenty-four (24) hours before the abortion that supportive care, including, but not limited to, counseling and medical care by maternal-fetal medical specialists, obstetricians, neonatologists, anesthesia specialists, clergy, social workers, and specialty nurses focused on alleviating fear and ensuring that the woman and her family experience the life and death of their child in a

comfortable and supportive environment, is available should she choose to carry her pregnancy to term.

HISTORY:
Laws, 2014, ch. 506, § 7, eff from and after July 1, 2014.

Joint Legislative Committee Note —
Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (1) by substituting "paragraph (d) of Section 41-41-133" for "Section 3(d) of Section 41-41-133." The Joint Committee ratified the correction at its August 17, 2015, meeting.

§ 41-41-143. Protection of privacy of woman on whom abortion was performed or induced or attempted to be performed or induced in civil or criminal proceedings.

(1) Except as otherwise provided by this section, in a civil or criminal proceeding or action involving an act prohibited under Sections 41-41-131 through 41-41-145, the identity of the woman on whom an abortion has been performed or induced or attempted to be performed or induced is not subject to public disclosure if the woman does not give consent to disclosure.

(2) Unless the court makes a ruling under subsection (3) of this section to allow disclosure of the woman's identity, the court shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to protect the woman's identity from public disclosure.

(3) A court may order the disclosure of information that is confidential under this section if:

(a) A motion is filed with the court requesting release of the information and a hearing on that request; and

(b) Notice of the hearing is served on each interested party.

(4) If the conditions specified in subsection (3) of this section are fulfilled, then after an in camera hearing, for each order issued under subsection (2) of this section that is challenged by a motion under subsection (3) of this section, the court shall either vacate the order or issue specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists.

HISTORY:
Laws, 2014, ch. 506, § 8, eff from and after July 1, 2014.

§ 41-41-145. Construction; constitutional challenge.

(1) Sections 41-41-131 through 41-41-145 shall be construed, as a matter of state law, to be enforceable up to but no further than the maximum possible extent consistent with federal constitutional requirements, even if that construction is not readily apparent, as such constructions are authorized only to the extent necessary to save Sections 41-41-131 through 41-41-145 from

judicial invalidation. Judicial reformation of statutory language is explicitly authorized only to the extent necessary to save the statutory provision from invalidity.

(2) If any court determines that a provision of Sections 41-41-131 through 41-41-145 is unconstitutionally vague, the court shall interpret the provision, as a matter of state law, to avoid the vagueness problem and shall enforce the provision to the maximum possible extent. If a federal court finds any provision of Sections 41-41-131 through 41-41-145 or its application to any person, group of persons, or circumstances to be unconstitutionally vague and declines to impose the saving construction described by this subsection, the Mississippi Supreme Court shall provide an authoritative construction of the objectionable statutory provisions that avoids the constitutional problems while enforcing the statute's restrictions to the maximum possible extent, and shall agree to answer any question certified from a federal appellate court regarding the statute.

(3) State executive or administrative officials may not decline to enforce Sections 41-41-131 through 41-41-145, or adopt a construction of Sections 41-41-131 through 41-41-145 in a way that narrows their applicability, based on the official's own beliefs about what the state or federal constitution requires, unless the official is enjoined by a state or federal court from enforcing Sections 41-41-131 through 41-41-145.

(4) Sections 41-41-131 through 41-41-145 may not be construed to authorize the prosecution of or a cause of action to be brought against a woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of Sections 41-41-131 through 41-41-145.

HISTORY:
Laws, 2014, ch. 506, § 9, eff from and after July 1, 2014.

§ 41-41-147. Relation to other Mississippi laws regulating or restricting abortions.

Sections 41-41-131 through 41-41-145 may not be construed to repeal, by implication or otherwise, any other provision of Mississippi law regulating or restricting abortion not specifically addressed by Sections 41-41-131 through 41-41-145. An abortion that complies with Sections 41-41-131 through 41-41-145 but violates any other law is unlawful. An abortion that complies with another state law but violates Sections 41-41-131 through 41-41-145 is unlawful as provided in Sections 41-41-131 through 41-41-145.

HISTORY:
Laws, 2014, ch. 506, § 11, eff from and after July 1, 2014.

§ 41-41-149. Severability.

(1) If some or all of the provisions of Sections 41-41-131 through 41-41-145 are ever temporarily or permanently restrained or enjoined by judicial order,

all other provisions of Mississippi law regulating or restricting abortion shall be enforced as though the restrained or enjoined provisions had not been adopted; however, whenever the temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, the provisions shall have full force and effect.

(2) *Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996),* in which in the context of determining the severability of a state statute regulating abortion the United States Supreme Court held that an explicit statement of legislative intent is controlling, it is the intent of the Legislature that every provision, section, subsection, paragraph, sentence, clause, phrase or word in Sections 41-41-131 through 41-41-145, and every application of the provisions in Sections 41-41-131 through 41-41-145, are severable from each other. If any application of any provision in Sections 41-41-131 through 41-41-145 to any person, group of persons, or circumstances is found by a court to be invalid, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of Sections 41-41-131 through 41-41-145 shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the Legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of Sections 41-41-131 through 41-41-145 to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not represent an undue burden shall be severed from the remaining provisions and shall remain in force, and shall be treated as if the Legislature had enacted a statute limited to the persons, group of persons, or circumstances for which the statute's application does not present an undue burden. The Legislature further declares that it would have passed Sections 41-41-131 through 41-41-145, and each provision, section, subsection, sentence, clause, phrase or word, and all constitutional applications of Sections 41-41-131 through 41-41-145, irrespective of the fact that any provision, section, subsection, paragraph, sentence, clause, phrase or word, or applications of Sections 41-41-131 through 41-41-145, were to be declared unconstitutional or to represent an undue burden.

(3) If Sections 41-41-131 through 41-41-145 are found by any court to be invalid or to impose an undue burden as applied to any person, group of persons, or circumstances, the prohibition shall apply to that person or group of persons or circumstances on the earliest date on which Sections 41-41-131 through 41-41-145 can be constitutionally applied.

(4) If any provisions of Sections 41-41-131 through 41-41-145 is found by any court to be unconstitutionally vague, then the applications of the provision that do not present constitutional vagueness problems shall be severed and remain in force.

HISTORY:

Laws, 2014, ch. 506, § 12, eff from and after July 1, 2014.

MISSISSIPPI UNBORN CHILD PROTECTION FROM DISMEMBERMENT ABORTION ACT

Sec.	
41-41-151.	Short title.
41-41-153.	Definitions.
41-41-155.	Dismemberment abortion prohibited.
41-41-157.	Remedies — Injunctions against dismemberment abortions.
41-41-159.	Civil remedies.
41-41-161.	Attorney's fees.
41-41-163.	Criminal penalty.
41-41-165.	Protection of privacy in court proceedings.
41-41-167.	Construction.
41-41-169.	Severability.
41-41-171 through 41-41-183.	Repealed.

§ 41-41-151. Short title.

Sections 41-41-151 through 41-41-169 may be cited as the "Mississippi Unborn Child Protection from Dismemberment Abortion Act."

HISTORY:

Laws, 2016, ch. 422, § 1, eff from and after July 1, 2016.

Editor's Notes —

A former § 41-41-151 provided that Sections 41-41-151 through 41-41-183 be cited as the Durable Power of Attorney for Health Care Act. For present provisions relating to power of attorney for health care decisions, see § 41-41-201 et seq.

§ 41-41-153. Definitions.

For the purposes of Sections 41-41-151 through 41-41-169, the following terms shall be defined as provided in this section:

(a) "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device:

(i) To purposely kill the unborn child of a woman known to be pregnant; or

(ii) To purposely terminate the pregnancy of a woman known to be pregnant, with a purpose other than:

1. After viability to produce a live birth and preserve the life and health of the child born alive; or

2. To remove a dead unborn child.

(b) "Attempt to perform an abortion" means to do or omit to do anything that, under the circumstances as the actor believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in oneself performing an abortion. Such substantial steps include, but are not limited to:

(i) Agreeing with an individual to perform an abortion on that individual or on some other person, whether or not the term "abortion" is used in the agreement, and whether or not the agreement is contingent on another factor such as receipt of payment or a determination of pregnancy; or

(ii) Scheduling or planning a time to perform an abortion on an individual, whether or not the term "abortion" is used, and whether or not the performance is contingent on another factor such as receipt of payment or a determination of pregnancy.

This definition shall not be construed to require that an abortion procedure actually must be initiated for an attempt to occur.

(c) "Dismemberment abortion" means, with the purpose of causing the death of an unborn child, purposely to dismember a living unborn child and extract him or her one piece at a time from the uterus through use of clamps, grasping forceps, tongs, scissors or similar instruments that, through the convergence of two rigid levers, slice, crush, and/or grasp a portion of the unborn child's body to cut or rip it off.

The term "dismemberment abortion" does not include an abortion that uses suction to dismember the body of the unborn child by sucking fetal parts into a collection container, although it does include an abortion in which a dismemberment abortion is used to cause the death of an unborn child but suction is subsequently used to extract fetal parts after the death of the unborn child.

(d) "Physician" means a person licensed to practice medicine and surgery or osteopathic medicine and surgery, or otherwise legally authorized to perform an abortion.

(e) "Purposely" means the following: A person acts purposely with respect to a material element of an offense when:

(i) If the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and

(ii) If the element involves the attendant circumstances, he is aware of the existence of those circumstances or he believes or hopes that they exist.

(f) "Serious health risk to the unborn child's mother" means that in reasonable medical judgment, she has a condition that so complicates her medical condition that it necessitates the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No such condition may be determined to exist if it is based on a claim or diagnosis that the woman will engage in conduct that she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

(g) "Woman" means a female human being whether or not she has reached the age of majority.

HISTORY:

Laws, 2016, ch. 422, § 2, eff from and after July 1, 2016.

Editor's Notes —

A former § 41-41-153 related to the legislative purpose of Sections 41-41-151 through 41-41-183. For present provisions relating to power of attorney for health care decisions, see § 41-41-201 et seq.

§ 41-41-155. Dismemberment abortion prohibited.

(1) Notwithstanding any other provision of law, it shall be unlawful for any person to purposely perform or attempt to perform a dismemberment abortion and thereby kill an unborn child unless necessary to prevent serious health risk to the unborn child's mother.

(2) A person accused in any proceeding of unlawful conduct under subsection (1) of this section may seek a hearing before the State Board of Medical Licensure on whether the dismemberment abortion was necessary to prevent serious health risk to the unborn child's mother. The board's findings are admissible on that issue at any trial in which the unlawful conduct is alleged. Upon a motion of the person accused, the court shall delay the beginning of the trial for not more than thirty (30) days to permit such a hearing to take place.

(3) No woman upon whom an abortion is performed or attempted to be performed shall be thereby liable for performing or attempting to perform a dismemberment abortion. No nurse, technician, secretary, receptionist or other employee or agent who is not a physician but who acts at the direction of a physician, and no pharmacist or other individual who is not a physician but who fills a prescription or provides instruments or materials used in an abortion at the direction of or to a physician shall be thereby liable for performing or attempting to perform a dismemberment abortion.

(4) Sections 41-41-151 through 41-41-169 do not prevent abortion for any reason, including rape and incest by any other method.

HISTORY:

Laws, 2016, ch. 422, § 3, eff from and after July 1, 2016.

Editor's Notes —

A former § 41-41-155 provided definitions of terms used in Sections 41-41-151 through 41-41-183. For present provisions relating to power of attorney for health care decisions, see § 41-41-201 et seq.

§ 41-41-157. Remedies — Injunctions against dismemberment abortions.

(1) Civil and criminal penalties for violations of Sections 41-41-151 through 41-41-169 may be imposed under the following priority:

(a) Injunctive relief;

(b) Civil cause of action; and

(c) Criminal action.

(2) A cause of action for injunctive relief against a person who has performed or attempted to perform a dismemberment abortion in violation of Section 41-41-155 may be maintained as a priority action by:

(a) A woman upon whom such a dismemberment abortion was performed or attempted to be performed;

(b) A person who is the spouse, parent or guardian of, or a current or former licensed health care provider of, a woman upon whom such a dismemberment abortion was performed or attempted to be performed; or

(c) A prosecuting attorney with appropriate jurisdiction.

(3) The injunction shall prevent the defendant from performing or attempting to perform further dismemberment abortions in violation of Section 41-41-155 in this state.

HISTORY:
Laws, 2016, ch. 422, § 4, eff from and after July 1, 2016.

Editor's Notes —
A former § 41-41-157 provided that substantial compliance with Sections 41-41-151 through 41-41-183 was required. For present provisions relating to power of attorney for health care decisions, see § 41-41-201 et seq.

§ 41-41-159. Civil remedies.

(1) Only in the event a cause of action for injunctive relief under Section 41-41-157 has been denied by a court of competent jurisdiction, a cause of action for civil damages against a person who has performed a dismemberment abortion in violation of Section 41-41-155 may be maintained by:

(a) Any woman upon whom a dismemberment abortion has been performed in violation of Section 41-41-155;

(b) The father of the unborn child, if married to the woman at the time the dismemberment abortion was performed; or

(c) If the woman had not attained the age of eighteen (18) years at the time of the dismemberment abortion or has died as a result of the abortion, the maternal grandparents of the unborn child.

(2) No damages may be awarded a plaintiff if the pregnancy resulted from the plaintiff's criminal conduct.

(3) Damages awarded in such an action shall include:

(a) Money damages for all injuries, psychological and physical, occasioned by the dismemberment abortion; and

(b) Statutory damages equal to three (3) times the cost of the dismemberment abortion.

HISTORY:
Laws, 2016, ch. 422, § 5, eff from and after July 1, 2016.

Editor's Notes —
A former § 41-41-159 related to requirements for attorney in fact to make health care decisions. For present provisions relating to power of attorney for health care decisions, see § 41-41-201 et seq.

§ 41-41-161. Attorney's fees.

(1) If judgment is rendered in favor of the plaintiff in an action described in Section 41-41-157 or 41-41-159, the court shall also render judgment for a reasonable attorney's fee in favor of the plaintiff against the defendant.

(2) If judgment is rendered in favor of the defendant in an action described in Section 41-41-157 or 41-41-159 and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall render judgment for a reasonable attorney's fee in favor of the defendant against the plaintiff.

(3) No attorney's fee may be assessed against the woman upon whom a

dismemberment abortion was performed or attempted to be performed except in accordance with subsection (2) of this section.

HISTORY:
Laws, 2016, ch. 422, § 6, eff from and after July 1, 2016.

Editor's Notes —
A former § 41-41-161 related to persons who were ineligible to be designated as attorneys in fact. For present provisions relating to power of attorney for health care decisions, see § 41-41-201 et seq.

§ 41-41-163. Criminal penalty.

Only in the event a judgment is rendered in favor of the defendant in an action described in Section 41-41-157 or 41-41-159, a district attorney with jurisdiction may bring an indictment for criminal punishment under this section. Any person who violates Section 41-41-155 is guilty of a felony and, upon conviction, shall be punished by a fine not more than Ten Thousand Dollars ($10,000.00), or commitment to the custody of the Department of Corrections for not more than two (2) years, or both.

HISTORY:
Laws, 2016, ch. 422, § 7, eff from and after July 1, 2016.

Editor's Notes —
A former § 41-41-163 related to the form and notice requirements for durable powers of attorney concerning health care decisions. For present provisions relating to power of attorney for health care decisions, see § 41-41-201 et seq.

Cross References —
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

§ 41-41-165. Protection of privacy in court proceedings.

In every civil, criminal, or administrative proceeding or action brought under Sections 41-41-151 through 41-41-169, the court shall rule whether the anonymity of any woman upon whom a dismemberment abortion has been performed or attempted to be performed shall be preserved from public disclosure if she does not give her consent to the disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman upon whom a dismemberment abortion has been performed or attempted to be performed, anyone other than a public official who brings an action under Section 41-41-157 or 41-41-159 shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

HISTORY:

Laws, 2016, ch. 422, § 8, eff from and after July 1, 2016.

Editor's Notes —

A former §41-41-165 related to powers of attorney in fact. For present provisions relating to power of attorney for health care decisions, see § 41-41-201 et seq.

§ 41-41-167. Construction.

Nothing in Sections 41-41-151 through 41-41-169 shall be construed as creating or recognizing a right to abortion, nor a right to a particular method of abortion.

HISTORY:

Laws, 2016, ch. 422, § 9, eff from and after July 1, 2016.

Editor's Notes —

A former § 41-41-167 related to the right of an attorney in fact to receive, review and disclose medical records. For present provisions relating to power of attorney for health care decisions, see § 41-41-201 et seq

§ 41-41-169. Severability.

If any one or more provisions, sections, subsections, sentences, clauses, phrases or words of Sections 41-41-151 through 41-41-169 or the application thereof to any person or circumstance is found to be unconstitutional, the same is declared to be severable and the balance of Sections 41-41-151 through 41-41-169 shall remain effective notwithstanding such unconstitutionality. The Legislature declares that it would have passed Sections 41-41-151 through 41-41-169, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provisions, sections, subsections, sentences, clauses, phrases or words be declared unconstitutional.

HISTORY:

Laws, 2016, ch. 422, § 10, eff from and after July 1, 2016.

Editor's Notes —

A former § 41-41-169 provided that a durable power of attorney was effective until revoked. For present provisions relating to power of attorney for health care decisions, see § 41-41-201 et seq.

§§ 41-41-171 through 41-41-183. Repealed.

Repealed by Laws, 1998, ch. 542, § 20, eff from and after July 1, 1998.
§ 41-41-171 through § 41-41-183. [Laws, 1990, ch. 571, § 11-17]

Editor's Notes —

Former §§ 41-41-171 through 41-41-183 (along with former §§ 41-41-151 through 41-41-169) related to powers conferred to an attorney-in-fact and the effects of valid durable powers of attorney concerning health care decisions. For present provisions relating to power of attorney for health care decisions, see § 41-41-201 et seq.

GESTATIONAL AGE ACT

Sec.
41-41-191. Gestational Age Act; legislative findings and purpose; definitions; abortion limited to fifteen weeks' gestation; exceptions; requisite report; reporting forms; professional sanctions; civil penalties; additional enforcement; construction; severability; right to intervene if constitutionality challenged.

§ 41-41-191. Gestational Age Act; legislative findings and purpose; definitions; abortion limited to fifteen weeks' gestation; exceptions; requisite report; reporting forms; professional sanctions; civil penalties; additional enforcement; construction; severability; right to intervene if constitutionality challenged.

(1) This section shall be known and cited as the "Gestational Age Act."

(2) **Legislative findings and purpose.** The Legislature makes the following findings of fact and incorporates them herein by reference:

(a) The United States is one (1) of only seven (7) nations in the world that permits nontherapeutic or elective abortion-on-demand after the twentieth week of gestation. In fact, fully seventy-five percent (75%) of all nations do not permit abortion after twelve (12) weeks' gestation, except (in most instances) to save the life and to preserve the physical health of the mother.

(b)(i) Medical and other authorities now know more about human prenatal development than ever before including that:

1. Between five (5) and six (6) weeks' gestation, an unborn human being's heart begins beating.

2. An unborn human being begins to move about in the womb at approximately eight (8) weeks' gestation.

3. At nine (9) weeks' gestation, all basic physiological functions are present. Teeth and eyes are present, as well as external genitalia.

4. An unborn human being's vital organs begin to function at ten (10) weeks' gestation. Hair, fingernails, and toenails also begin to form.

5. At eleven (11) weeks' gestation, an unborn human being's diaphragm is developing, and he or she may even hiccup. He or she is beginning to move about freely in the womb.

6. At twelve (12) weeks' gestation, an unborn human being can open and close his or her fingers, starts to make sucking motions, and senses stimulation from the world outside the womb. Importantly, he or she has taken on "the human form" in all relevant aspects. *Gonzales v. Carhart,* 550 U.S. 124, 160 (2007).

7. The Supreme Court has long recognized that the State of Mississippi has an "important and legitimate interest in protecting the potentiality of human life," *Roe v. Wade,* 410 U.S. 113, 162 (1973), and specifically that "the state has an interest in protecting the life of the unborn." *Planned Parenthood of Southeastern Pennsylvania v. Casey,* 505 U.S. 833, 873 (1992).

8. The majority of abortion procedures performed after fifteen (15) weeks' gestation are dilation and evacuation procedures which involve the use of surgical instruments to crush and tear the unborn child apart before removing the pieces of the dead child from the womb. The Legislature finds that the intentional commitment of such acts for nontherapeutic or elective reasons is a barbaric practice, dangerous for the maternal patient, and demeaning to the medical profession.

9. Most obstetricians and gynecologists practicing in the State of Mississippi do not offer or perform nontherapeutic or elective abortions. Even fewer offer or perform the dilation and evacuation abortion procedure even though it is within their scope of practice.

(ii) Abortion carries significant physical and psychological risks to the maternal patient, and these physical and psychological risks increase with gestational age. Specifically, in abortions performed after eight (8) weeks' gestation, the relative physical and psychological risks escalate exponentially as gestational age increases. L. Bartlett et al., *Risk factors for legal induced abortion mortality in the United States,* OBSTETRICS AND GYNECOLOGY 103(4):729 (2004).

(iii) Importantly, as the second trimester progresses, in the vast majority of uncomplicated pregnancies, the maternal health risks of undergoing an abortion are greater than the risks of carrying a pregnancy to term.

(iv) Medical complications from dilation and evacuation abortions include, but are not limited to: pelvic infection; incomplete abortions (retained tissue); blood clots; heavy bleeding or hemorrhage; laceration, tear, or other injury to the cervix; puncture, laceration, tear, or other injury to the uterus; injury to the bowel or bladder; depression; anxiety; substance abuse; and other emotional or psychological problems. Further, in abortions performed after fifteen (15) weeks' gestation, there is a higher risk of requiring a hysterectomy, other reparative surgery, or blood transfusion.

(v) The State of Mississippi also has "legitimate interests from the outset of pregnancy in protecting the health of women." *Planned Parenthood of Southeastern Pennsylvania v. Casey,* 505 U.S. 833, 847 (1992), as the "medical, emotional, and psychological consequences of abortion are serious and can be lasting ..." *H.L. v. Matheson,* 450 U.S. 398, 411 (1981).

(c) Based on the findings in paragraph (a) of this subsection, it is the intent of the Legislature, through this section and any regulations and policies promulgated hereunder, to restrict the practice of nontherapeutic or elective abortion to the period up to the fifteenth week of gestation.

(3) **Definitions.** As used in this section:

(a) "Abortion" means the use or prescription of an instrument, medicine, drug, or other substance or device with the intent to terminate a clinically diagnosable pregnancy for reasons other than to increase the probability of a live birth, to preserve the life or health of the unborn human being, to terminate an ectopic pregnancy, or to remove a dead unborn human being.

(b) "Attempt to perform or induce an abortion" means to do or omit anything that, under the circumstances as the person believes them to be, is an act or omission that constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in violation of this section.

(c) "Conception" means the fusion of human spermatozoon with a human ovum.

(d) "Department" means the Mississippi State Department of Health.

(e) "Gestation" means the time that has elapsed since the first day of the woman's last menstrual period.

(f) "Gestational age" or "probable gestation age" means the age of an unborn human being as calculated from the first day of the last menstrual period of the pregnant woman.

(g) "Human being" means an individual member of the species Homo sapiens, from and after the point of conception.

(h) "Severe fetal abnormality" means a life-threatening physical condition that, in reasonable medical judgment, regardless of the provision of life-saving medical treatment, is incompatible with life outside the womb.

(i) "Major bodily function" includes, but is not limited to, functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(j) "Medical emergency" means a condition in which, on the basis of the physician's good faith clinical judgment, an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition arising from the pregnancy itself, or when the continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function.

(k) "Physician" or "referring physician" means a person licensed to practice medicine in the State of Mississippi.

(4) **Abortion limited to fifteen (15) weeks' gestation except in medical emergency and in cases of severe fetal abnormality.**

(a) Except in a medical emergency or in the case of a severe fetal abnormality, a person shall not perform, induce, or attempt to perform or induce an abortion unless the physician or the referring physician has first made a determination of the probable gestational age of the unborn human being and documented that gestational age in the maternal patient's chart and, if required, in a report to be filed with the department as set forth in paragraph (c) of this subsection. The determination of probable gestational age shall be made according to standard medical practices and techniques used in the community.

(b) Except in a medical emergency or in the case of a severe fetal abnormality, a person shall not intentionally or knowingly perform, induce, or attempt to perform or induce an abortion of an unborn human being if the probable gestational age of the unborn human being has been determined to be greater than fifteen (15) weeks.

(c) In every case in which a physician performs or induces an abortion on an unborn human being whose gestational age is greater than fifteen (15) weeks, the physician shall within fifteen (15) days of the abortion cause to be filed with the department, on a form supplied by the department, a report containing the following information:

(i) Date the abortion was performed;

(ii) Specific method of abortion used;

(iii) The probable gestational age of the unborn human being and the method used to calculate gestational age;

(iv) A statement declaring that the abortion was necessary to preserve the life or physical health of the maternal patient;

(v) Specific medical indications supporting the abortion; and

(vi) Probable health consequences of the abortion and specific abortion method used.

The physician shall sign the form as his or her attestation under oath that the information stated thereon is true and correct to the best of his or her knowledge.

(d) Reports required and submitted under this subsection (4) shall not contain the name of the maternal patient upon whom the abortion was performed or any other information or identifiers that would make it possible to identify, in any manner or under any circumstances, a woman who obtained or sought to obtain an abortion.

(5) **Reporting forms.** The department shall create the forms required by this section within thirty (30) days after March 19, 2018. No provision of this section requiring the reporting of information on forms published by the department shall be applicable until ten (10) days after the requisite forms have been made available or March 19, 2018, whichever is later.

(6) **Professional sanctions and civil penalties.** (a) A physician who intentionally or knowingly violates the prohibition in subsection (4) of this section commits an act of unprofessional conduct and his or her license to practice medicine in the State of Mississippi shall be suspended or revoked pursuant to action by the Mississippi State Board of Medical Licensure.

(b) A physician who knowingly or intentionally delivers to the department any report required by subsection (4)(c) of this section and known by him or her to be false shall be subject to a civil penalty or fine up to Five Hundred Dollars ($500.00) per violation imposed by the department.

(7) **Additional enforcement.** The Attorney General shall have authority to bring an action in law or equity to enforce the provisions of this section on behalf of the Director of the Mississippi State Department of Health or the Mississippi State Board of Medical Licensure. The Mississippi State Board of Medical Licensure shall also have authority to bring such action on its own behalf.

(8) **Construction.** Nothing in this section shall be construed as creating or recognizing a right to abortion or as altering generally accepted medical standards. It is not the intention of this section to make lawful an abortion that is otherwise unlawful. An abortion that complies with this section, but violates

any other state law, is unlawful. An abortion that complies with another state law, but violates this section is unlawful.

(9) **Severability.** (a) It is the intent of the Legislature that every provision of this section shall operate with equal force and shall be severable one from the other and that, in the event that any provision of this section shall be held invalid or unenforceable by a court of competent jurisdiction, said provision shall be deemed severable and the remaining provisions of this section deemed fully enforceable.

(b) In the event that any provision of this section shall be held invalid or unenforceable by a court of competent jurisdiction, Sections 41-41-131 through 41-41-145 shall remain in effect. If some or all of the provisions of this section are ever temporarily or permanently restrained or enjoined by judicial order, all other provisions of Mississippi law regulating or restricting abortion shall be enforced as though the restrained or enjoined provisions had not been adopted; however, whenever the temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, the provisions of this section shall have full force and effect.

(c) Mindful of *Leavitt v. Jane L.,* 518 U.S. 137 (1996), regarding the context of determining the severability of a state section of law regulating abortion, the United States Supreme Court held that an explicit statement of legislative intent is controlling. Accordingly, it is the intent of the Legislature that every provision, section, subsection, paragraph, sentence, clause, phrase or word in this section and every application of the provisions in this section is severable from each other. If any application of any provision in this section to any person, group of persons, or circumstances is found by a competent court to be invalid, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of this section shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the Legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this statute to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not represent an undue burden shall be severed from the remaining provisions and shall remain in force, and shall be treated as if the Legislature had enacted a section limited to the persons, group of persons, or circumstances for which the section's application does not present an undue burden. The Legislature further declares that it would have passed this section and each provision, section, subsection, paragraph, sentence, clause, phrase or word, and all constitutional applications of this section, without regard to the fact that any provision, section, subsection, paragraph, sentence, clause, phrase or word, or applications of this section, were to be declared unconstitutional or to represent an undue burden.

(d) If this section is found by any competent court to be invalid or to impose an undue burden as applied to any person, group of persons, or circumstances, the prohibition shall apply to that person or group of persons or circumstances on the earliest date on which this section can be constitutionally applied.

(e) If any provisions of this section are found by a competent court to be unconstitutionally vague, then the applications of the provision that do not present constitutional vagueness problems shall be severed and remain in force.

(10) **Right of intervention.** The Legislature, through one or more sponsors of this section duly appointed by resolution of their respective chamber, may intervene as a matter of right in any case in which the constitutionality of this section is challenged. The Governor may also intervene as a matter of right in any case in which the constitutionality of this section is challenged.

HISTORY:

Laws, 2018, ch. 393, § 1, eff from and after passage (approved March 19, 2018).

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal statutory reference in subsection (4)(d) by substituting "under this subsection (4)" for "under subsection (4) of this section." The Joint Committee ratified the correction at its August 14, 2018, meeting.

UNIFORM HEALTH-CARE DECISIONS ACT

Sec.
41-41-201. Short title.
41-41-203. Definitions.
41-41-205. Individual instructions; power of attorney; decisions by primary physician; agents; guardians; validity.
41-41-207. Revoking designation of agent or Advance Health-Care Directive.
41-41-209. Form for Advance Health-Care Directive.
41-41-211. Surrogates.
41-41-213. Guardians and wards.
41-41-215. Health-care provider or institution responsibilities.
41-41-217. Rights to disclosure of medical and health-care information.
41-41-219. Health-care provider or institution liability and discipline.
41-41-221. Liability for intentional violations and fraudulent inducements.
41-41-223. Construction of provisions and presumed capacity.
41-41-225. Copies have same effect as originals.
41-41-227. Construction and application of provisions.
41-41-229. Equitable relief; Rules of Civil Procedure applicable.

§ 41-41-201. Short title.

Sections 41-41-201 through 41-41-229 may be cited as the "Uniform Health-Care Decisions Act."

HISTORY:

Laws, 1998, ch. 542, § 1, eff from and after July 1, 1998.

Editor's Notes —

Laws of 1998, ch. 542, § 16, provides:

"SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

Cross References —

Applicability of this chapter to offender provided forms necessary to execute advance health-care directive by Department of Corrections, see § 47-5-180.

JUDICIAL DECISIONS

1. Arbitration.

Daughter had the capacity to bind her parent to arbitration as part of a nursing home application process, while acting as the parent's healthcare surrogate under the Uniform Health-Care Decisions Act, Miss. Code Ann. §§ 41-41-201 through 41-41-229. Covenant Health & Rehab. of Picayune, LP v. Lumpkin, 23 So. 3d 1092, 2008 Miss. App. LEXIS 826 (Miss. Ct. App. 2008).

Healthcare surrogate, acting under the provisions of the Uniform Health-Care Decisions Act, Miss. Code Ann. §§ 41-41-201 through 41-41-229, is capable of binding his or her patient to arbitration. Covenant Health & Rehab. of Picayune, LP v. Lumpkin, 23 So. 3d 1092, 2008 Miss. App. LEXIS 826 (Miss. Ct. App. 2008).

Son, as the mother's health-care surrogate, had the authority to bind the mother to the arbitration agreement between the mother and nursing home under the Uniform Health-Care Decisions Act, Miss. Code Ann. §§ 41-41-201 through 41-41-229; the admissions agreement between the mother and nursing home had sufficient consideration to support arbitration, the son was not fraudulently induced into signing the agreement, and the arbitration clause was substantively conscionable. Covenant Health & Rehab. of Picayune, LP v. Estate of Moulds, 14 So. 3d 736, 2008 Miss. App. LEXIS 496 (Miss. Ct. App. 2008), rev'd, 14 So. 3d 695, 2009 Miss. LEXIS 369 (Miss. 2009).

Motion to compel arbitration should have been granted in a patient's personal injury case against a health care provider because the patient's daughter had the capacity to bind the patient to arbitration when the daughter signed admission forms while acting as a health-care surrogate under the Mississippi Uniform Health-Care Decisions Act, Miss. Code Ann. §§ 41-41-201 to 41-41-229. Covenant Health & Rehab. of Picayune, LP v. Lumpkin, 2008 Miss. App. LEXIS 86 (Miss. Ct. App. Feb. 5, 2008).

§ 41-41-203. Definitions.

For purposes of Chapter 41 of Title 41, Mississippi Code of 1972, the following words shall have the meaning ascribed in this section unless the context shall otherwise require:

(a) "Adult" means an individual who is eighteen (18) years of age or older.

(b) "Advance health-care directive" means an individual instruction or a power of attorney for health care.

(c) "Agent" means an individual designated in a power of attorney for health care to make a health-care decision for the individual granting the power.

(d) "Capacity" means an individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health-care decision.

(e) "Emancipated minor" means an individual under the age of eighteen (18) years who:

(i) Is or has been married;

(ii) Has been adjudicated generally emancipated by a court of competent jurisdiction; or

(iii) Has been adjudicated emancipated for the purpose of making health-care decisions by a court of competent jurisdiction.

(f) "Guardian" means a judicially appointed guardian or conservator having authority to make a health-care decision for an individual.

(g) "Health care" means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect an individual's physical or mental condition.

(h) "Health-care decision" means a decision made by an individual or the individual's agent, guardian, or surrogate, regarding the individual's health care, including:

(i) Selection and discharge of health-care providers and institutions;

(ii) Approval or disapproval of diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate; and

(iii) Directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care.

The phrase "health-care decision" does not include decisions made pursuant to Sections 41-39-31 through 41-39-51, the "Anatomical Gift Law."

(i) "Health-care institution" means an institution, facility, or agency licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business.

(j) "Health-care provider" means an individual licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession.

(k) "Individual instruction" means an individual's direction concerning a health-care decision for the individual.

(*l*) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(m) "Physician" means an individual authorized to practice medicine or osteopathy under Title 73, Chapter 25, Mississippi Code of 1972.

(n) "Power of attorney for health care" means the designation of an agent to make health-care decisions for the individual granting the power.

(o) "Primary physician" means a physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility.

(p) "Reasonably available" means readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health-care needs.

(q) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(r) "Supervising health-care provider" means the primary physician or, if there is no primary physician or the primary physician is not reasonably available, the health-care provider who has undertaken primary responsibility for an individual's health care.

(s) "Surrogate" means an individual, other than a patient's agent or guardian, authorized under Sections 41-41-201 through 41-41-229 to make a health-care decision for the patient.

HISTORY:

Laws, 1998, ch. 542, § 2, eff from and after July 1, 1998.

Editor's Notes —

Laws of 1998, ch. 542, § 16, provides:

"SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

The Anatomical Gift Law, §§ 41-39-31 through 41-39-51, referred to in this section, was repealed by Laws of 2008, ch. 561, § 26, effective July 1, 2008. For present similar provisions, see the Revised Mississippi Uniform Anatomical Gift Act, §§ 41-39-101 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. Arbitration agreements.
2. Health-care decision.
3. Primary physician.

1. Arbitration agreements.

Nursing home was not entitled to compel arbitration of a wrongful-death complaint because the decedent's surviving spouse lacked the authority to act as the decedent's health-care surrogate, before the decedent's death, and thus bind the decedent to arbitration by signing the nursing home's admission agreement, which contained an arbitration clause, as there was no evidence that the decedent's primary physician had determined that the decedent lacked capacity to make a healthcare decision. Bankston v. CLC of Biloxi, LLC (In re Estate of Bankston), 240 So. 3d 456, 2017 Miss. App. LEXIS 537 (Miss. Ct. App. 2017), cert. denied, 245 So. 3d 395, 2018 Miss. LEXIS 171 (Miss. 2018).

Son, as the resident's health care surrogate, had the authority to make health care decisions pursuant to Miss. Code Ann. § 41-41-211(2); however, health care decisions did not include signing arbitration agreements, as the decision to arbitrate was neither explicitly authorized nor implied within Miss. Code Ann. § 41-41-203(h), and the jury had to determine whether the resident signed the admission agreement and if so, whether she was competent to do so. Covenant Health & Rehab. of Picayune, LP v. Estate of Lambert, 984 So. 2d 283, 2006 Miss. App. LEXIS 908 (Miss. Ct. App. 2006), cert. denied, 984 So. 2d 277, 2008 Miss. LEXIS 292 (Miss. 2008).

2. Health-care decision.

Because the signing of the resident and facility arbitration agreement was an explicit requirement for admission to the center's facility, the decision to sign concerned the selection of health-care providers and, therefore, qualified as a health-care decision under the Uniform Health-Care Decisions Act. Dykes v. Cleveland Nursing & Rehab. Ctr., — F. Supp. 3d —, 2016 U.S. Dist. LEXIS 12798 (N.D. Miss. Feb. 3, 2016), in part, — F. Supp. 3d —, 2018 U.S. Dist. LEXIS 94312 (N.D. Miss. June 5, 2018), in part, — F. Supp. 3d —, 2018 U.S. Dist. LEXIS 103130 (N.D. Miss. June 20, 2018).

Son, as the resident's health care surrogate, had the authority to make health care decisions pursuant to Miss. Code Ann. § 41-41-211(2); however, health care decisions did not include signing arbitration agreements, as the decision to arbitrate was neither explicitly authorized nor implied within Miss. Code Ann. § 41-41-203(h), and the jury had to determine whether the resident signed the admission agreement and if so, whether she was competent to do so. Covenant Health & Rehab. of Picayune, LP v. Estate of Lambert, 984 So. 2d 283, 2006 Miss. App. LEXIS 908 (Miss. Ct. App. 2006), cert. denied, 984 So. 2d 277, 2008 Miss. LEXIS 292 (Miss. 2008).

3. Primary physician.

In a wrongful death case, it was error to enter an order compelling arbitration because the record did not support a finding that a doctor was the patient's primary physician; at most, the record supported that the doctor saw the patient twice in nearly three years, which was not enough to show that the doctor had undertaken primary responsibility for the patient's care, especially since family members designated another physician as the "attending physician" in an admission agreement just three days later. A primary physician had not determined that the patient lacked capacity, such that a daughter was qualified statutorily to act as his surrogate and bind him to the arbitration agreement. Tarvin ex rel. Wrongful Death Beneficiaries of Tarvin v. CLC of Jackson, LLC, 193 So. 3d 633, 2016 Miss. LEXIS 260 (Miss. 2016).

§ 41-41-205. Individual instructions; power of attorney; decisions by primary physician; agents; guardians; validity.

(1) An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.

(2) An adult or emancipated minor may execute a power of attorney for health care, which may authorize the agent to make any health-care decision the principal could have made while having capacity. The power remains in effect notwithstanding the principal's later incapacity and may include individual instructions. Unless related to the principal by blood, marriage, or adoption, an agent may not be an owner, operator, or employee of a residential long-term health-care institution at which the principal is receiving care. The power must be in writing, contain the date of its execution, be signed by the principal, and be witnessed by one (1) of the following methods:

(a) Be signed by at least two (2) individuals each of whom witnessed either the signing of the instrument by the principal or the principal's acknowledgement of the signature or of the instrument, each witness making the following declaration in substance: "I declare under penalty of perjury pursuant to Section 97-9-61, Mississippi Code of 1972, that the principal is personally known to me, that the principal signed or acknowledged this power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud or undue influence, that I am not the person appointed as agent by this document, and that I am not a health-care provider, nor an employee of a health-care provider or facility." In addition, the declaration of at least one (1) of the witnesses must include the following: "I am not related to the principal by blood, marriage or adoption, and to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law."

(b) Be acknowledged before a notary public at any place within this state, the notary public certifying to the substance of the following:

"State of ________________
County of ________________
On this ________ day of ________, in the year ________, before me, ________ (insert name of notary public) appeared ________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it. I declare under the penalty of perjury that the person whose name is subscribed to this instrument appears to be of sound mind and under no duress, fraud or undue influence.

Notary Seal

____
(Signature of Notary Public)"

(3) None of the following may be used as witness for a power of attorney for health care:

(a) A health-care provider;

(b) An employee of a health-care provider or facility; or

(c) The agent.

(4) At least one (1) of the individuals used as a witness for a power of attorney for health care shall be someone who is neither:

(a) A relative of the principal by blood, marriage or adoption; nor

(b) An individual who would be entitled to any portion of the estate of the principal upon his or her death under any will or codicil thereto of the principal existing at the time of execution of the power of attorney for health care or by operation of law then existing.

(5) Unless otherwise specified in a power of attorney for health care, the authority of an agent becomes effective only upon a determination that the principal lacks capacity, and ceases to be effective upon a determination that the principal has recovered capacity.

(6) Unless otherwise specified in a written advance health-care directive, a determination that an individual lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent, must be made by the primary physician.

(7) An agent shall make a health-care decision in accordance with the principal's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent's determination of the principal's best interest. In determining the principal's best interest, the agent shall consider the principal's personal values to the extent known to the agent.

(8) A health-care decision made by an agent for a principal is effective without judicial approval.

(9) A written advance health-care directive may include the individual's nomination of a guardian of the person.

(10) An advance health-care directive is valid for purposes of Sections 41-41-201 through 41-41-229 if it complies with Sections 41-41-201 through 41-41-229, regardless of when or where executed or communicated.

HISTORY:

Laws, 1998, ch. 542, § 3, eff from and after July 1, 1998.

Editor's Notes —

Laws of 1998, ch. 542, § 16, provides: "SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

JUDICIAL DECISIONS

1. Validity.

Denial of a care center's motion to compel arbitration in a wrongful-death action brought against it was appropriate because there was no submission of a statement of the decedent's primary physician stating that he lacked capacity, Miss. Code Ann. § 41-41-205(5)-(6). Thus, his power of attorney for healthcare was never effectuated and the care center's argument that the decedent's sister had actual authority to act under the power of attorney failed. Monticello Cmty. Care Ctr., LLC v. Estate of Martin, 17 So. 3d 172, 2009 Miss. App. LEXIS 558 (Miss. Ct. App. 2009).

§ 41-41-207. Revoking designation of agent or Advance Health-Care Directive.

(1) An individual may revoke the designation of an agent only by a signed writing or by personally informing the supervising health-care provider.

(2) An individual may revoke all or part of an advance health-care directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.

(3) A health-care provider, agent, guardian, or surrogate who is informed of a revocation shall promptly communicate the fact of the revocation to the supervising health-care provider and to any health-care institution at which the patient is receiving care.

(4) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as agent unless otherwise specified in the decree or in a power of attorney for health care.

(5) An advance health-care directive that conflicts with an earlier advance health-care directive revokes the earlier directive to the extent of the conflict.

HISTORY:

Laws, 1998, ch. 542, § 4, eff from and after July 1, 1998.

Editor's Notes —

Laws, 1998, ch. 542, § 16, provides: "SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

§ 41-41-209. Form for Advance Health-Care Directive.

The following form may be used to create an Advance Health-Care Directive. Sections 41-41-201 through 41-41-207 and 41-41-211 through 41-41-229 govern the effect of this or any other writing used to create an advanced health-care directive. An individual may complete or modify all or any part of the following form:

ADVANCE HEALTH-CARE DIRECTIVE

Explanation

You have the right to give instructions about your own health care. You also have the right to name someone else to make health-care decisions for you. This form lets you do either or both of these things. It also lets you express your wishes regarding the designation of your primary physician. If you use this form, you may complete or modify all or any part of it. You are free to use a different form.

Part 1 of this form is a power of attorney for health care. Part 1 lets you name another individual as agent to make health-care decisions for you if you become incapable of making your own decisions or if you want someone else to make those decisions for you now even though you are still capable. You may name an alternate agent to act for you if your first choice is not willing, able or reasonably available to make decisions for you. Unless related to you, your agent may not be an owner, operator, or employee of a residential long-term health-care institution at which you are receiving care.

Unless the form you sign limits the authority of your agent, your agent may make all health-care decisions for you. This form has a place for you to limit the authority of your agent. You need not limit the authority of your agent if you wish to rely on your agent for all health-care decisions that may have to be made. If you choose not to limit the authority of your agent, your agent will have the right to:

(a) Consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a physical or mental condition;

(b) Select or discharge health-care providers and institutions;

(c) Approve or disapprove diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate; and

(d) Direct the provision, withholding, or withdrawal of artificial nutrition and hydration and all other forms of health care.

Part 2 of this form lets you give specific instructions about any aspect of your health care. Choices are provided for you to express your wishes regarding the provision, withholding, or withdrawal of treatment to keep you alive, including the provision of artificial nutrition and hydration, as well as the provision of pain relief. Space is provided for you to add to the choices you have made or for you to write out any additional wishes.

Part 3 of this form lets you designate a physician to have primary responsibility for your health care.

Part 4 of this form lets you authorize the donation of your organs at your death, and declares that this decision will supersede any decision by a member of your family.

After completing this form, sign and date the form at the end and have the form witnessed by one of the two alternative methods listed below. Give a copy of the signed and completed form to your physician, to any other health-care providers you may have, to any health-care institution at which you are receiving care, and to any health-care agents you have named. You should talk to the person you have named as agent to make sure that he or she understands your wishes and is willing to take the responsibility.

You have the right to revoke this advance health-care directive or replace this form at any time.

PART 1

POWER OF ATTORNEY FOR HEALTH CARE

(1) DESIGNATION OF AGENT: I designate the following individual as my agent to make health-care decisions for me:

____

(name of individual you choose as agent)

____

(address) (city) (state) (zip code)

____

(home phone) (work phone)

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able, or reasonably available to make a health-care decision for me, I designate as my first alternate agent:

____

(name of individual you choose as first alternate agent)

____

(address) (city) (state) (zip code)

____

(home phone) (work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a health-care decision for me, I designate as my second alternate agent:

____

____

(name of individual you choose as second alternate agent)

____

(address) (city) (state) (zip code)

____

(home phone) (work phone)

(2) AGENT'S AUTHORITY: My agent is authorized to make all health-care decisions for me, including decisions to provide, withhold, or withdraw artificial nutrition and hydration, and all other forms of health care to keep me alive, except as I state here:

____

____

____

(Add additional sheets if needed.)

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician determines that I am unable to make my own health-care decisions unless I mark the following box. If I mark this box [ ], my agent's authority to make health-care decisions for me takes effect immediately.

(4) AGENT'S OBLIGATION: My agent shall make health-care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health-care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN: If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able, or reasonably available to act as guardian, I nominate the alternate agents whom I have named, in the order designated.

PART 2

INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine what is best for you in making end-of-life decisions, you need not fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

(6) END-OF-LIFE DECISIONS: I direct that my health-care providers and others involved in my care provide, withhold or withdraw treatment in accordance with the choice I have marked below:

[ ] (a) Choice Not To Prolong Life

I do not want my life to be prolonged if (i) I have an incurable and irreversible condition that will result in my death within a relatively short time, (ii) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness, or (iii) the likely risks and burdens of treatment would outweigh the expected benefits, or

[ ] (b) Choice To Prolong Life

I want my life to be prolonged as long as possible within the limits of generally accepted health care standards.

(7) ARTIFICIAL NUTRITION AND HYDRATION: Artificial nutrition and hydration must be provided, withheld or withdrawn in accordance with the choice I have made in paragraph (6) unless I mark the following box. If I mark this box [ ], artificial nutrition and hydration must be provided regardless of my condition and regardless of the choice I have made in paragraph (6).

(8) RELIEF FROM PAIN: Except as I state in the following space, I direct that treatment for alleviation of pain or discomfort be provided at all times, even if it hastens my death:

____

____

(9) OTHER WISHES: (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that:

____

____

(Add additional sheets if needed.)

PART 3

PRIMARY PHYSICIAN

(OPTIONAL)

(10) I designate the following physician as my primary physician:

____

(name of physician)

____

(address) (city) (state) (zip code)

____
(phone)

OPTIONAL: If the physician I have designated above is not willing, able, or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

____
(name of physician)

____
(address) (city) (state) (zip code)

____
(phone)

(11) EFFECT OF COPY: A copy of this form has the same effect as the original.

(12) SIGNATURES: Sign and date the form here:

______________ ______________________
(date) (sign your name)

______________ ______________________
(address) (print your name)

____
(city) (state)

PART 4

CERTIFICATE OF AUTHORIZATION FOR ORGAN DONATION

(OPTIONAL)

I, the undersigned, this ____________ day of ____________, 20______, desire that my ________________ organ(s) be made available after my demise for:

(a) Any licensed hospital, surgeon or physician, for medical education, research, advancement of medical science, therapy or transplantation to individuals;

(b) Any accredited medical school, college or university engaged in medical education or research, for therapy, educational research or medical science purposes or any accredited school of mortuary science;

(c) Any person operating a bank or storage facility for blood, arteries, eyes, pituitaries, or other human parts, for use in medical education, research, therapy or transplantation to individuals;

(d) The donee specified below, for therapy or transplantation needed by him or her, do donate my ____________ for that purpose to ____________ (name) at

____________________________ (address).

I authorize a licensed physician or surgeon to remove and preserve for use my ____________________ for that purpose.

I specifically provide that this declaration shall supersede and take precedence over any decision by my family to the contrary.

Witnessed this ____________ day of ____________, 20______.

____
(donor)

____
(address)

____
(telephone)

____
(witness)

____
(witness)

(13) WITNESSES: This power of attorney will not be valid for making health-care decisions unless it is either (a) signed by two (2) qualified adult witnesses who are personally known to you and who are present when you sign or acknowledge your signature; or (b) acknowledged before a notary public in the state.

ALTERNATIVE NO. 1

Witness

I declare under penalty of perjury pursuant to Section 97-9-61, Mississippi Code of 1972, that the principal is personally known to me, that the principal signed or acknowledged this power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud or undue influence, that I am not the person appointed as agent by this document, and that I am not a health-care provider, nor an employee of a health-care provider or facility. I am not related to the principal by blood, marriage or adoption, and to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

_______________ ________________________
(date) (signature of witness)

_______________ ________________________
(address) (printed name of witness)

____
(city) (state)

Witness

I declare under penalty of perjury pursuant to Section 97-9-61, Mississippi Code of 1972, that the principal is personally known to me, that the principal signed or acknowledged this power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud or undue influence, that I am not the person appointed as agent by this document, and that I am not a health-care provider, nor an employee of a health-care provider or facility.

_______________ ________________________
(date) (signature of witness)

____________________ ____________________________________
(address) (printed name of witness)

____
(city) (state)

ALTERNATIVE NO. 2

State of ________
County of ________
On this ______ day of ______, in the year ______, before me, ______ (insert name of notary public) appeared ______, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it. I declare under the penalty of perjury that the person whose name is subscribed to this instrument appears to be of sound mind and under no duress, fraud or undue influence.

Notary Seal

____
(Signature of Notary Public)

HISTORY:

Laws, 1998, ch. 542, § 5; Laws, 2005, ch. 472, § 5, eff from and after July 1, 2005.

Editor's Notes —

Laws of 1998, ch. 542, § 16, provides:

"SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

Laws of 2005, ch. 472, § 1 provides as follows:

"SECTION 1. This act shall be known and may be cited as the "Lindsay Miller – Beth Finch Organ Recovery Act."

At the direction of co-counsel of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, to correct a typographical error in Part 4(b), the word "of" was substituted for "or" so that "school or mortuary science" now reads "school of mortuary science."

§ 41-41-211. Surrogates.

(1) A surrogate may make a health-care decision for a patient who is an adult or emancipated minor if the patient has been determined by the primary physician to lack capacity and no agent or guardian has been appointed or the agent or guardian is not reasonably available.

(2) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health-care provider. In the absence of a designation, or if the designee is not reasonably available, any member of the following classes of the patient's family who is reasonably available, in descending order of priority, may act as surrogate:

(a) The spouse, unless legally separated;
(b) An adult child;
(c) A parent; or
(d) An adult brother or sister.

(3) If none of the individuals eligible to act as surrogate under subsection (2) is reasonably available, an adult who has exhibited special care and concern

for the patient, who is familiar with the patient's personal values, and who is reasonably available may act as surrogate.

(4) A surrogate shall communicate his or her assumption of authority as promptly as practicable to the members of the patient's family specified in subsection (2) who can be readily contacted.

(5) If more than one (1) member of a class assumes authority to act as surrogate, and they do not agree on a health-care decision and the supervising health-care provider is so informed, the supervising health-care provider shall comply with the decision of a majority of the members of that class who have communicated their views to the provider. If the class is evenly divided concerning the health-care decision and the supervising health-care provider is so informed, that class and all individuals having lower priority are disqualified from making the decision.

(6) A surrogate shall make a health-care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the surrogate.

(7) A health-care decision made by a surrogate for a patient is effective without judicial approval.

(8) An individual at any time may disqualify another, including a member of the individual's family, from acting as the individual's surrogate by a signed writing or by personally informing the supervising health-care provider of the disqualification.

(9) A surrogate may not be an owner, operator, or employee of a residential long-term health-care institution at which the patient is receiving care unless related to the patient by blood, marriage, or adoption, except in the case of a patient of a state-operated facility who has no person listed in subsection (2) reasonably available to act as a surrogate.

(10) A supervising health-care provider may require an individual claiming the right to act as surrogate for a patient to provide a written declaration under penalty of perjury stating facts and circumstances reasonably sufficient to establish the claimed authority.

HISTORY:

Laws, 1998, ch. 542, § 6; Laws, 1999, ch. 425, § 1, eff from and after passage (approved Mar. 18, 1999).

Editor's Notes —

Laws of 1998, ch. 542, § 16, provides:

"SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

JUDICIAL DECISIONS

ANALYSIS

1. Arbitration agreements.
2. Incapacity by admission.
3. Authority to bind.

1. Arbitration agreements.

Nursing home was not entitled to compel arbitration of a wrongful-death complaint because the decedent's surviving spouse lacked the authority to act as the decedent's healthcare surrogate, before the decedent's death, and thus bind the decedent to arbitration by signing the nursing home's admission agreement, which contained an arbitration clause, as there was no evidence that the decedent's primary physician had determined that the decedent lacked capacity to make a healthcare decision. Bankston v. CLC of Biloxi, LLC (In re Estate of Bankston), 240 So. 3d 456, 2017 Miss. App. LEXIS 537 (Miss. Ct. App. 2017), cert. denied, 245 So. 3d 395, 2018 Miss. LEXIS 171 (Miss. 2018).

Where a son signed an arbitration agreement on the son's mother's behalf when the mother was admitted to a nursing home, the son brought a wrongful death action against defendants, and defendants sought to compel arbitration, the son lacked actual authority to sign the arbitration agreement on the mother's behalf because, inter alia, Miss. Code Ann. § 41-41-211(1) was not relevant since the arbitration contract was not treated as a condition of admission. Gross v. GGNSC Southaven, LLC, 83 F. Supp. 3d 691, 2015 U.S. Dist. LEXIS 14071 (N.D. Miss. 2015), vacated, 817 F.3d 169, 2016 U.S. App. LEXIS 4749 (5th Cir. Miss. 2016).

Nursing home resident's was not the resident's health care surrogate under Miss. Code Ann. § 41-41-211(1) (Rev. 2013) for purposes of signing an admission agreement contain an arbitration clause where there was no evidence that the resident's primary physician had made a capacity determination, and under the strict interpretation requirements for health care surrogate statutes, substantial compliance was not enough. Hattiesburg Health & Rehab Ctr., LLC v. Brown, 176 So. 3d 17, 2015 Miss. LEXIS 412 (Miss. 2015).

Decedent's estate and wrongful death beneficiaries were not bound by an arbitration agreement signed by an administratrix as part of the decedent's admission to a nursing home because the administratrix was not the decedent's health-care surrogate under Miss. Code Ann. § 41-41-211(1), did not possess actual authority over the decedent, and did not have the apparent authority to bind the decedent to the contract; the record was utterly devoid of any acts or conduct of the decedent indicating that the administratrix was his agent for the purpose of making health-care decisions. Because a valid contract did not exist, a third-party beneficiary could not have existed, and thus no arbitration provision existed between the decedent and the nursing home. Ggnsc Batesville, LLC v. Johnson, 109 So. 3d 562, 2013 Miss. LEXIS 73 (Miss. 2013).

Denial of a care center's motion to compel arbitration in a wrongful-death action brought against it was appropriate there was no corroborating evidence by a physician that the decedent lacked the capacity to make healthcare decisions for himself, Miss. Code Ann. § 41-41-211(1). Thus, his sister could not make healthcare decisions for him as his healthcare surrogate. Monticello Cmty. Care Ctr., LLC v. Estate of Martin, 17 So. 3d 172, 2009 Miss. App. LEXIS 558 (Miss. Ct. App. 2009).

Decedent nursing home resident's nephew was not shown to meet the requirements of a healthcare surrogate–and thus an admissions agreement that was signed by the nephew did not bind the decedent to an arbitration clause–because: (1) there was no evidence that the decedent had been determined by her primary physician to lack capacity; (2) although there was evidence that the decedent had a living adult child who, under the statute, would have had priority to serve as her surrogate, the record contained no evidence that her adult child was unavailable or unwilling to act as a surrogate; and (3) the nephew did not fall under any of the statute's enumerated categories of those who could act as a surrogate, nor was there evidence that the nephew exhibited special care and concern for the decedent, or that he was familiar with her personal values. Compere's Nursing Home, Inc. v. Estate of Farish, 982 So. 2d 382, 2008 Miss. LEXIS 263 (Miss. 2008).

Trial court erred in denying the nursing home's motion to compel arbitration as the caretaker had authority to bind the resident to the arbitration provision within the nursing home admission agreement, because she was a health-care surrogate under Miss. Code Ann. § 41-41-211(3); the caretaker's reason to place the resident in the home was a health-care decision. Magnolia Healthcare, Inc. v. Barnes, 2008 Miss. LEXIS 26 (Miss. Jan. 10, 2008), op. withdrawn, sub. op., 994 So. 2d 159, 2008 Miss. LEXIS 392 (Miss. 2008).

With respect to deceased's admission into a nursing home under an agreement with the deceased's daughter, the daughter had no authority as a health care surrogate to enter into the agreement's arbitration provision because signing the provision was not necessary for deceased's admission and was not necessarily in his best interest. Miss. Care Ctr. of Greenville, LLC v. Hinyub, 975 So. 2d 211, 2008 Miss. LEXIS 16 (Miss. 2008).

Son would have been authorized to bind his mother and her estate to arbitration with the nursing home were she first properly determined to be incapacitated; however, the proof as to the mother's incapacity was insufficient to statutorily authorize the son to make a health care decision for her as a surrogate pursuant to Miss. Code Ann. § 41-41-211. Trinity Mission of

Clinton, LLC v. Barber, 988 So. 2d 910, 2007 Miss. App. LEXIS 550 (Miss. Ct. App. 2007).

Parties stipulated that the father, a nursing home resident, was competent when he entered the nursing home, and no physician had declared him incompetent, and no agent or guardian had been appointed; accordingly, the father's half-sister could not have been his healthcare surrogate and because the father was not incapacitated, the statutes governing health care surrogates did not apply. Gren. Living Ctr., LLC v. Coleman, 961 So. 2d 33, 2007 Miss. LEXIS 407 (Miss. 2007).

Arbitration clause in a nursing home admission agreement signed by a patient's mother was enforceable where the patient admitted she was mentally incapacitated and could not sign the agreement, and the mother was an appropriate member of the class from which a surrogate could be drawn under Miss. Code Ann. § 41-41-211(2)(c). JP Morgan Chase & Co. v. Conegie, 492 F.3d 596, 2007 U.S. App. LEXIS 16926 (5th Cir. Miss. 2007).

Son, as the resident's health care surrogate, had the authority to make health care decisions pursuant to Miss. Code Ann. § 41-41-211(2); however, health care decisions did not include signing arbitration agreements, as the decision to arbitrate was neither explicitly authorized nor implied within Miss. Code Ann. § 41-41-203(h), and the jury had to determine whether the resident signed the admission agreement and if so, whether she was competent to do so. Covenant Health & Rehab. of Picayune, LP v. Estate of Lambert, 984 So. 2d 283, 2006 Miss. App. LEXIS 908 (Miss. Ct. App. 2006), cert. denied, 984 So. 2d 277, 2008 Miss. LEXIS 292 (Miss. 2008).

2. Incapacity by admission.

Seeing that the decedent was incapacitated by virtue of admission by her representatives and corroboration by her admitting physician, she was capable legally of having her decisions made by a surrogate; her adult daughter was an appropriate member of the classes from which a surrogate could be drawn, and thus the daughter could contractually bind the decedent in matters of health care. Covenant Health Rehab of Picayune, L.P. v. Brown, 949 So. 2d 732, 2007 Miss. LEXIS 43 (Miss. 2007), overruled in part, Covenant Health & Rehab. of Picayune, LP v. Estate of Moulds, 14 So. 3d 695, 2009 Miss. LEXIS 369 (Miss. 2009).

3. Authority to bind.

At the time the individual executed the resident and facility arbitration agreement, the individual lacked the authority to bind the decedent because the decedent's primary physician had not made an incapacity determination at the time the individual executed the agreement. Dykes v. Cleveland Nursing & Rehab. Ctr., — F. Supp. 3d —, 2016 U.S. Dist. LEXIS 12798 (N.D. Miss. Feb. 3, 2016), in part, — F. Supp. 3d —, 2018 U.S. Dist. LEXIS 94312 (N.D. Miss. June 5, 2018), in part, — F. Supp. 3d —, 2018 U.S. Dist. LEXIS 103130 (N.D. Miss. June 20, 2018).

In a wrongful death case, it was error to enter an order compelling arbitration because the record did not support a finding that a doctor was the patient's primary physician; at most, the record supported that the doctor saw the patient twice in nearly three years, which was not enough to show that the doctor had undertaken primary responsibility for the patient's care, especially since family members designated another physician as the "attending physician" in an admission agreement just three days later. A primary physician had not determined that the patient lacked capacity, such that a daughter was qualified statutorily to act as his surrogate and bind him to the arbitration agreement. Tarvin ex rel. Wrongful Death Beneficiaries of Tarvin v. CLC of Jackson, LLC, 193 So. 3d 633, 2016 Miss. LEXIS 260 (Miss. 2016).

In an action for damages against a nursing home, the trial court properly denied the nursing home's motion to compel arbitration because neither of the resident's sons, who had signed the admission paperwork containing the arbitration clause, had authority to bind the resident where neither had authority act as a surrogate on behalf of the resident under Miss. Code Ann. § 41-41-211, and there was no evidence that a primary physician had found the resident to be incapacitated. Adams Cmty. Care Ctr., LLC v. Reed, 37 So. 3d 1155, 2010 Miss. LEXIS 203 (Miss. 2010).

Nursing home resident's granddaughter had no authority to bind the resident to a nursing home agreement the granddaughter signed because the granddaughter was not a health-care surrogate, and the resident had not been determined to be incompetent. Forest Hill Nursing Ctr., Inc. v. McFarlan, 995 So. 2d 775, 2008 Miss. App. LEXIS 194 (Miss. Ct. App. 2008).

§ 41-41-213. Guardians and wards.

(1) A guardian shall comply with the ward's individual instructions and may not revoke the ward's advance health-care directive unless the appointing court expressly so authorizes.

(2) Absent a court order to the contrary, a health-care decision of an agent takes precedence over that of a guardian.

(3) A health-care decision made by a guardian for the ward is effective without judicial approval.

HISTORY:

Laws, 1998, ch. 542, § 7, eff from and after July 1, 1998.

Editor's Notes —

Laws of 1998, ch. 542, § 16, provides:

"SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

§ 41-41-215. Health-care provider or institution responsibilities.

(1) Before implementing a health-care decision made for a patient, a supervising health-care provider, if possible, shall promptly communicate to the patient the decision made and the identity of the person making the decision.

(2) A supervising health-care provider who knows of the existence of an advance health-care directive, a revocation of an advance health-care directive, or a designation or disqualification of a surrogate, shall promptly record its existence in the patient's health-care record and, if it is in writing, shall request a copy and if one is furnished shall arrange for its maintenance in the health-care record.

(3) A primary physician who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of an agent, guardian, or surrogate, shall promptly record the determination in the patient's health-care record and communicate the determination to the patient, if possible, and to any person then authorized to make health-care decisions for the patient.

(4) Except as provided in subsections (5) and (6), a health-care provider or institution providing care to a patient shall:

(a) Comply with an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health-care decisions for the patient; and

(b) Comply with a health-care decision for the patient made by a person then authorized to make health-care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity.

(5) A health-care provider may decline to comply with an individual instruction or health-care decision for reasons of conscience. A health-care institution may decline to comply with an individual instruction or health-care decision if the instruction or decision is contrary to a policy of the institution which is expressly based on reasons of conscience and if the policy was timely communicated to the patient or to a person then authorized to make health-care decisions for the patient.

(6) A health-care provider or institution may decline to comply with an individual instruction or health-care decision that requires medically ineffec-

tive health care or health care contrary to generally accepted health-care standards applicable to the health-care provider or institution.

(7) A health-care provider or institution that declines to comply with an individual instruction or health-care decision shall:

(a) Promptly so inform the patient, if possible, and any person then authorized to make health-care decisions for the patient;

(b) Provide continuing care to the patient until a transfer can be effected; and

(c) Unless the patient or person then authorized to make health-care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health-care provider or institution that is willing to comply with the instruction or decision.

(8) A health-care provider or institution may not require or prohibit the execution or revocation of an advance health-care directive as a condition for providing health care.

(9) If the patient who is an adult or emancipated minor has been determined by the primary physician to lack capacity to make a health-care decision and an agent, guardian or surrogate is not reasonably available, consent may be given by an owner, operator or employee of a residential long-term health-care institution at which the patient is a resident if there is no advance health-care directive to the contrary and a licensed physician who is not an owner, operator or employee of the residential long-term health-care institution at which the patient is a resident has determined that the patient is in need of health care. This power to consent is limited to the terms of this subsection (9) and shall not be construed to repeal or otherwise affect the prohibition of Section 41-41-211(9) relating to owners, operators, or employees of long-term health-care institutions. The consent given pursuant to this subsection shall be limited to the health-care services determined necessary by the licensed physician and shall in no event include the power to consent to or direct withholding or discontinuing any life support, nutrition, hydration or other treatment, care or support. When consent is obtained under this subsection, compliance with these requirements shall be stated in the patient's health-care record.

HISTORY:

Laws, 1998, ch. 542, § 8; Laws, 1999, ch. 513, § 1, eff from and after passage (approved Apr. 15, 1999).

Editor's Notes —

Laws of 1998, ch. 542, § 16, provides:

"SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

§ 41-41-217. Rights to disclosure of medical and health-care information.

Unless otherwise specified in an advance health-care directive, a person then authorized to make health-care decisions for a patient has the same rights as the patient to request, receive, examine, copy and consent to the disclosure of medical or any other health-care information.

HISTORY:
Laws, 1998, ch. 542, § 9, eff from and after July 1, 1998.

Editor's Notes —
Laws of 1998, ch. 542, § 16, provides: "SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

§ 41-41-219. Health-care provider or institution liability and discipline.

(1) A health-care provider or institution acting in good faith and in accordance with generally accepted health-care standards applicable to the health-care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

(a) Complying with a health-care decision of a person apparently having authority to make a health-care decision for a patient, including a decision to withhold or withdraw health care;

(b) Declining to comply with a health-care decision of a person based on a belief that the person then lacked authority; or

(c) Complying with an advance health-care directive and assuming that the directive was valid when made and has not been revoked or terminated.

(2) An individual acting as agent or surrogate under Sections 41-41-201 through 41-41-229 is not subject to civil or criminal liability or to discipline for unprofessional conduct for health-care decisions made in good faith.

HISTORY:
Laws, 1998, ch. 542, § 10, eff from and after July 1, 1998.

Editor's Notes —
Laws of 1998, ch. 542, § 16, provides: "SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

§ 41-41-221. Liability for intentional violations and fraudulent inducements.

(1) A health-care provider or institution that intentionally violates Sections 41-41-201 through 41-41-229 is subject to liability to the aggrieved individual for damages of Five Hundred Dollars ($500.00) or actual damages resulting from the violation, whichever is greater, plus reasonable attorney's fees.

(2) A person who intentionally falsifies, forges, conceals, defaces, or obliterates an individual's advance health-care directive or a revocation of an advance health-care directive without the individual's consent, or who coerces or fraudulently induces an individual to give, revoke, or not to give an advance health-care directive, is subject to liability to that individual for damages of Twenty-five Hundred Dollars ($2,500.00) or actual damages resulting from the action, whichever is greater, plus reasonable attorney's fees.

HISTORY:

Laws, 1998, ch. 542, § 11, eff from and after July 1, 1998.

Editor's Notes —

Laws of 1998, ch. 542, § 16, provides:

"SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

§ 41-41-223. Construction of provisions and presumed capacity.

(1) Sections 41-41-201 through 41-41-229 do not affect the right of an individual to make health-care decisions while having capacity to do so.

(2) An individual is presumed to have capacity to make a health-care decision, to give or revoke an advance health-care directive, and to designate or disqualify a surrogate.

HISTORY:

Laws, 1998, ch. 542, § 12, eff from and after July 1, 1998.

Editor's Notes —

Laws of 1998, ch. 542, § 16, provides:

"SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

JUDICIAL DECISIONS

1. Determination of capacity.

In a wrongful death case, it was error to enter an order compelling arbitration because the record did not support a finding that a doctor was the patient's primary physician; at most, the record supported that the doctor saw the patient twice in nearly three years, which was not enough to show that the doctor had undertaken primary responsibility for the patient's care, especially since family members designated another physician as the "attending physician" in an admission agreement just three days later. A primary physician had not determined that the patient lacked capacity, such that a daughter was qualified statutorily to act as his surrogate and bind him to the arbitration agreement. Tarvin ex rel. Wrongful Death Beneficiaries of Tarvin v. CLC of Jackson, LLC, 193 So. 3d 633, 2016 Miss. LEXIS 260 (Miss. 2016).

§ 41-41-225. Copies have same effect as originals.

A copy of a written advance health-care directive, revocation of an advance health-care directive, or designation or disqualification of a surrogate has the same effect as the original.

HISTORY:

Laws, 1998, ch. 542, § 13, eff from and after July 1, 1998.

Editor's Notes —

Laws of 1998, ch. 542, § 16, provides:

"SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

§ 41-41-227. Construction and application of provisions.

(1) Sections 41-41-201 through 41-41-229 do not create a presumption concerning the intention of an individual who has not made or who has revoked an advance health-care directive.

(2) Death resulting from the withholding or withdrawal of health care in

accordance with Sections 41-41-201 through 41-41-229 does not for any purpose constitute a suicide or homicide or legally impair or invalidate a policy of insurance or an annuity providing a death benefit, notwithstanding any term of the policy or annuity to the contrary.

(3) Sections 41-41-201 through 41-41-229 do not authorize mercy killing, assisted suicide, euthanasia, or the provision, withholding, or withdrawal of health care, to the extent prohibited by other statutes of this state.

(4) Sections 41-41-201 through 41-41-229 do not authorize or require a health-care provider or institution to provide health care contrary to generally accepted health-care standards applicable to the health-care provider or institution.

(5) Sections 41-41-201 through 41-41-229 do not authorize an agent or surrogate to consent to the admission of an individual to a mental health-care institution unless the individual's written advance health-care directive expressly so provides.

(6) Sections 41-41-201 through 41-41-229 do not affect other statutes of this state governing treatment for mental illness of an individual involuntarily committed to a mental health-care institution.

(7) Sections 41-41-201 through 41-41-229 do not apply to Sections 41-41-31 through 41-41-39, which govern the performance of abortions, or Sections 41-41-51 through 41-41-63, which govern the performance of abortions upon minors.

HISTORY:

Laws, 1998, ch. 542, § 14, eff from and after July 1, 1998.

Editor's Notes —

Laws of 1998, ch. 542, § 16, provides:

"SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

§ 41-41-229. Equitable relief; Rules of Civil Procedure applicable.

On petition of a patient, the patient's agent, guardian, or surrogate, a health-care provider or institution involved with the patient's care, or an individual described in Section 41-41-211(2) or (3), any court of competent jurisdiction may enjoin or direct a health-care decision or order other equitable relief. A proceeding under this section shall be governed by the Mississippi Rules of Civil Procedure.

HISTORY:

Laws, 1998, ch. 542, § 15, eff from and after July 1, 1998.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a reference in the first sentence. The reference to "Section 9(2) or (3)" was changed to "Section 41-41-211(2) or (3)." The Joint Committee ratified the correction at its April 28, 1999, meeting.

Editor's Notes —

Laws of 1998, ch. 542, § 16, provides:

"SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

MISSISSIPPI PHYSICIAN ORDER FOR SUSTAINING TREATMENT (POST) ACT

Sec.	
41-41-301.	Short title.
41-41-302.	Physician order for sustaining treatment.
41-41-303.	Immunity, liability, penalties and equitable relief.

§ 41-41-301. Short title.

Sections 41-41-301 through 41-41-303 shall be known and may be cited as the "Mississippi Physician Order for Sustaining Treatment (POST) Act."

HISTORY:

Laws, 2014, ch. 470, § 1, eff from and after July 1, 2014.

§ 41-41-302. Physician order for sustaining treatment.

(1) A physician order for sustaining treatment (POST) directing health care in the standardized form provided by this section may be executed by the primary physician of an individual and:

(a) The individual, if an adult or emancipated minor with capacity; or

(b) The agent, guardian, or surrogate having authority to make health care decisions on behalf of the individual if the individual is:

(i) An unemancipated minor; or

(ii) An adult or emancipated minor who lacks capacity.

(2) The physician order for sustaining treatment shall be executed, implemented, reviewed, and revoked in accordance with the instructions on the form.

(3) The State Board of Medical Licensure shall promulgate a standardized physician order for sustaining treatment form in accordance with the provisions in this section, adhering to the sequence in those provisions and using checkboxes to indicate the various alternatives. The board shall consult with appropriate professional and advocacy organizations in developing the physician order for sustaining treatment form, including the Mississippi Hospital Association, the Mississippi State Medical Association, Mississippians for Emergency Medical Services, the Mississippi Health Care Association, the Mississippi Independent Nursing Home Association, the Louisiana-Mississippi Hospice and Palliative Care Organization, Disability Rights Mississippi, Mississippi Right to Life, the Mississippi Bar Association and the Mississippi Section of American Congress of Obstetricians and Gynecologists.

The physician order for sustaining treatment form shall begin with an introductory section containing the name "POST, Physician Orders for Sustaining Treatment," the patient's name, patient's date of birth, the effective date of the form followed by the statement "Form must be reviewed at least annually.", and containing the statements "HIPAA permits disclosure of POST to other health care professionals as necessary" and "This document is based on this person's current medical condition and wishes and is to be reviewed for potential replacement in the case of a substantial change in either. Any section not completed indicates preference for full treatment for that section."

(a) Section A of the form shall direct provision or withholding of cardiopulmonary resuscitation to the patient when he or she has no pulse and is not breathing by selecting one (1) of the following:

(i) Attempt Resuscitation (CPR); or

(ii) Do Not Attempt Resuscitation (DNR); and include the statement "When not in cardiopulmonary arrest, follow orders in B, C, and D."

(b) Section B of the form shall direct the sustaining treatment when the patient has a pulse or is breathing by selecting one (1) of the following:

(i) Full Sustaining Treatment, including the use of intubation, advanced airway interventions, mechanical ventilation, defibrillation or cardio version as indicated, medical treatment, intravenous fluids, and comfort measures. This option shall include the statement "Transfer to a hospital if indicated. Includes intensive care. Treatment Plan: Full treatment including life support measures";

(ii) Limited Interventions, including the use of medical treatment, oral and intravenous medications, intravenous fluids, cardiac monitoring as indicated, noninvasive bi-level positive airway pressure, a bag valve mask, and comfort measures. This option excludes the use of intubation or mechanical ventilation. This option shall include the statement "Transfer to a hospital if indicated. Avoid intensive care. Treatment Plan: Provide basic medical treatments"; or

(iii) Comfort Measures, including keeping the patient clean, warm, and dry; use of medication by any route; positioning, wound care, and other measures to relieve pain and suffering; and the use of oxygen, suction, and manual treatment of airway obstruction as needed for comfort. This option shall include the statement "Do not transfer to a hospital unless comfort needs cannot be met in the patient's current location (e.g., hip fracture)," and include a space for other instructions.

(c) Section C of the form shall direct the use of oral and intravenous antibiotics by selecting one (1) of the following:

(i) Antibiotics if life can be sustained;

(ii) Determine use or limitation of antibiotics when infection occurs;

(iii) Use antibiotics only to relieve pain and discomfort; and include a space for other instructions.

(d) Section D of the form, which shall have the heading "Medically Administered Fluids and Nutrition: Administer oral fluids and nutrition if physically possible," shall include the following options:

(i) Directing the administration of nutrition into blood vessels if physically feasible as determined in accordance with reasonable medical judgment by selecting one (1) of the following:

1. Total parenteral nutrition long-term if indicated;

2. Total parenteral nutrition for a defined trial period, which option shall be followed by "Goal:" and a blank line; or

3. No parenteral nutrition;

(ii) Directing the administration of nutrition by tube if physically feasible as determined in accordance with reasonable medical judgment by selecting one (1) of the following:

1. Long-term feeding tube if indicated;
2. Feeding tube for a defined trial period, which option shall be followed by "Goal:" and a blank line; or
3. No feeding tube;

and shall include a space for other instructions; or

(iii) Directing the administration of hydration, if physically feasible as determined in accordance with reasonable medical judgment, by selecting one (1) of the following:

1. Long-term intravenous fluids if indicated;
2. Intravenous fluids for a defined trial period, which option shall be followed by "Goal:" and a blank line; or
3. Intravenous fluids only to relieve pain and discomfort.

(e) Section E of the form, which shall have the heading "Patient Preferences as a Basis for this POST Form," shall include the following:

(i) A direction to indicate whether or not the patient has an advance health-care directive as defined in Section 41-41-203 and if so, the date of the advance directive's execution, and, a certification that the physician order for sustaining treatment is in accordance with the advance directive, followed by the printed name, position, and signature of an individual so certifying;

(ii) If the patient is an unemancipated minor, an indication of by which one or more of the following directions were given in accordance with Section 41-41-3:

1. Minor's guardian or custodian;
2. Minor's parent;
3. Adult brother or sister of the minor;
4. Minor's grandparent; or
5. Adult who has exhibited special care and concern for minor; and

(iii) If the patient is an adult or an emancipated minor, by which one or more of the following directions were given in accordance with Section 41-41-205, 41-41-211 or 41-41-213:

1. Patient;
2. Agent authorized by patient's power of attorney for health care;
3. Guardian of the patient;
4. Surrogate designated by patient;
5. Spouse of patient (if not legally separated);
6. Adult child of the patient;
7. Parent of the patient;
8. Adult brother or sister of the patient; or
9. Adult who has exhibited special care and concern for the patient and is familiar with the patient's values.

(f) A signature portion of the form, which shall include lines for the printed name, signature, and date of signing for:

(i) The patient's primary physician;

(ii) The individual or individuals described in paragraph (e)(ii) or (iii) of this subsection; and

(iii) The health care professional preparing the form, if other than the patient's primary physician, with contact information.

(g) A section entitled "Information for patient or representative of patient named on this form," which shall include the following language:

"The POST form is always voluntary and is usually for persons with advanced illness. POST records your wishes for medical treatment in your current state of health. Once initial medical treatment is begun and the risks and benefits of further therapy are clear, your treatment wishes may change. Your medical care and this form can be changed to reflect your new wishes at any time. However, no form can address all the medical treatment decisions that may need to be made. An advance health-care directive is recommended for all capable adults and emancipated minors, regardless of their health status. An advance directive allows you to document in detail your future health care instructions and/or name a health-care agent to speak for you if you are unable to speak for yourself.

If this form is for a minor for whom you are authorized to make health-care decisions, you may not direct denial of medical treatment in a manner that would make the minor a 'neglected child' under Section 43-21-105, Mississippi Code of 1972, or otherwise violate the child abuse and neglect laws of Mississippi. In particular, you may not direct the withholding of medically indicated treatment from a disabled infant with life-threatening conditions, as those terms are defined in 42 USCS Section 5106g or regulations implementing it and 42 USCS Section 5106a.".

(h) A section entitled "Directions for Completing and Implementing Form," which shall include the following four (4) subdivisions:

(i) The first subdivision, entitled "Completing POST," shall have the following language:

POST must be reviewed and prepared in consultation with the patient or the patient's representative.

POST must be reviewed and signed by a physician to be valid. Be sure to document the basis for concluding the patient had or lacked capacity at the time of execution of the form in the patient's medical record. The signature of the patient or the patient's representative is required; however, if the patient's representative is not reasonably available to sign the original form, a copy of the completed form with the signature of the patient's representative must be placed in the medical record as soon as practicable and "on file" must be written on the appropriate signature on this form.

Use of original form is required. Be sure to send the original form with the patient.

There is no requirement that a patient have a POST.

(ii) The second subdivision, entitled "Implementing POST," shall have the following language:

If a health care provider or facility is unwilling to comply with the orders due to policy or personal objections, the provider or facility must not impede transfer of the patient to another provider or facility willing to implement the orders and must provide at least requested care in the meantime unless, in reasonable medical judgment, denial of requested care would not result in or hasten the patient's death.

If a minor protests a directive to deny the minor life-preserving medical treatment, the denial of treatment may not be implemented pending issuance of a judicial order resolving the conflict.

(iii) The third subdivision, entitled "Reviewing POST," shall have the following language:

This POST must be reviewed at least annually or earlier if;
The patient is admitted or discharged from a health care facility;
There is a substantial change in the patient's health status; or
The patient's treatment preferences change.

If POST is revised or becomes invalid, draw a line through Sections A-E and write "VOID" in large letters.

(iv) The fourth subdivision, entitled "Revocation of POST," shall have the following language:

This POST may be revoked by the patient or the patient's representative.

(i) A section entitled "Review of POST," which shall include the following columns and a number of rows determined by the State Board of Medical Licensure:

(i) Review Date;
(ii) Reviewer and Location of Review;
(iii) MD/DO Signature (Required); and
(iv) Signature of Patient or Representative (Required).

(j) A section entitled "Outcome of Review," which shall include descriptions of the outcome in each row by selecting one (1) of the following:

(i) No Change;
(ii) FORM VOIDED, new form completed; or
(iii) FORM VOIDED, no new form.

HISTORY:
Laws, 2014, ch. 470, § 2, eff from and after July 1, 2014.

§ 41-41-303. Immunity, liability, penalties and equitable relief.

(1) A physician or health-care provider acting in good faith and in accordance with generally accepted health-care standards applicable to the physician or health-care provider is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

(a) Executing a physician order for sustaining treatment in compliance with a health-care decision of a person apparently having authority to make a health-care decision for a patient, including a decision to provide, withhold or withdraw health care;

(b) Declining to execute a physician order for sustaining treatment in compliance with a health-care decision of a person based on a belief that the person then lacked authority; or

(c) Complying with an apparently valid physician order for sustaining treatment on the assumption that the order was valid when made and has not been revoked or terminated.

(2) A health-care provider or institution that intentionally violates Section 41-41-302 is subject to liability to the aggrieved individual for damages of Five Hundred Dollars ($500.00) or actual damages resulting from the violation, whichever is greater, plus reasonable attorney's fees.

(3) A person who intentionally falsifies, forges, conceals, defaces, or obliterates an individual's physician order for sustaining treatment or a revocation of a physician order for sustaining treatment without the individual's consent, or who coerces or fraudulently induces an individual to give, revoke, or not to give a physician order for sustaining treatment, is subject to liability to that individual for damages of Twenty-five Hundred Dollars ($2,500.00) or actual damages resulting from the action, whichever is greater, plus reasonable attorney's fees.

(4) On petition of a patient, the patient's agent, guardian, or surrogate, a health-care provider or institution involved with the patient's care, or surrogate for the patient as described in Section 41-41-211(2) or (3), any court of competent jurisdiction may enjoin or direct a health-care decision related to a physician order for scope of treatment, or order other equitable relief. A proceeding under this section shall be governed by the Mississippi Rules of Civil Procedure.

HISTORY:

Laws, 2014, ch. 470, § 3, eff from and after July 1, 2014.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in subsection (4) of this section. The reference to " Section 41-41-229(2) or (3)" was changed to "Section 41-41-211(2) or (3)." The Joint Committee ratified the correction at its August 14, 2018, meeting.

CHAPTER 42.

FAMILY PLANNING

Sec.
41-42-1. Title.
41-42-3. Definitions.
41-42-5. Power and authority of State Board of Health.
41-42-7. Furnishing contraceptive supplies and information to minors.

§ 41-42-1. Title.

This chapter shall be known and may be cited as the Family Planning Law of 1972.

HISTORY:

Codes, 1942, § 7129-151; Laws, 1972, ch. 531, § 1, eff from and after July 1, 1972.

RESEARCH REFERENCES

ALR.

Propriety of prophylactic availability programs. 52 A.L.R.5th 477.

Am. Jur.

1 Am. Jur. 2d, Abortion and Birth Control §§ 1 et seq.

§ 41-42-3. Definitions.

For the purposes of this chapter and as used herein:

(a) "Board" means the Mississippi State Board of Health;

(b) "Physician" means any doctor of medicine duly licensed to practice his profession in Mississippi or the state in which he resides and lawfully practicing his profession;

(c) "Contraceptive procedures" means any medically accepted procedure designed to prevent conception;

(d) "Contraceptive supplies" means those medically approved items designed to prevent conception through chemical, mechanical, or other means.

HISTORY:

Codes, 1942, § 7129-152; Laws, 1972, ch. 531, § 2, eff from and after July 1, 1972.

§ 41-42-5. Power and authority of State Board of Health.

The State Board of Health is authorized to receive and disburse such funds as may become available to it for family planning programs to any organization, public or private, engaged in providing contraceptive procedures, supplies, and information. Any family planning program administered by the board may be developed in consultation and coordination with other family planning agencies in this state.

The board is hereby authorized to adopt and promulgate rules and regulations to implement the provisions of this chapter.

The board may provide for the dissemination of medically acceptable contraceptive information and supplies by duly authorized persons in state and county health and welfare departments and in medical facilities at institutions of higher learning.

HISTORY:

Codes, 1942, § 7129-153; Laws, 1972, ch. 531, § 3, eff from and after July 1, 1972.

Cross References —

Power of the state board of health to establish programs concerning family planning, see § 41-3-15.

RESEARCH REFERENCES

ALR.

Propriety of prophylactic availability programs. 52 A.L.R.5th 477.

Liability of manufacturer or seller for injury or death allegedly caused by use of contraceptive. 54 A.L.R.5th 1.

Am. Jur.

1 Am. Jur. 2d, Abortion and Birth Control §§ 1 et seq.

§ 41-42-7. Furnishing contraceptive supplies and information to minors.

Contraceptive supplies and information may be furnished by physicians to any minor who is a parent, or who is married, or who has the consent of his or her parent or legal guardian, or who has been referred for such service by another physician, a clergyman, a family planning clinic, a school or institution of higher learning, or any agency or instrumentality of this state or any subdivision thereof.

HISTORY:

Codes, 1942, § 7129-154; Laws, 1972, ch. 531, § 4, eff from and after July 1, 1972.

JUDICIAL DECISIONS

1. In general.

The Federal Constitution does not forbid a state from expressing a preference for normal childbirth rather than for abortion. Planned Parenthood v. Casey, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674, 1992 U.S. LEXIS 4751 (U.S. 1992).

Under the due process clause of the Federal Constitution's Fourteenth Amendment, a state (1) may take steps to insure that a woman's decision whether to have an abortion is thoughtful and informed, and (2) is free to enact laws to provide a reasonable framework for a woman to make a decision that has such profound and lasting meaning as does a decision whether to terminate a pregnancy. Planned Parenthood v. Casey, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674, 1992 U.S. LEXIS 4751 (U.S. 1992).

The Federal Government has no duty, under the due process clause of the Federal Constitution's Fifth Amendment, to subsidize an activity merely because the activity is constitutionally protected, and thus it may validly choose to fund childbirth over abortion and implement that judgment in health regulations by the allocation of public funds for medical services relating to childbirth but not to those relating to abortion; the government has no affirmative duty under the due process clause to commit any resources to facilitating abortions, and its decision to fund childbirth but not abortion places no governmental obstacle in the path of a woman who chooses to terminate her pregnancy, but rather, by means of unequal subsidization of abortion and other medical services, encourages alternative activity deemed in the public interest. Rust v. Sullivan, 500 U.S. 173, 111 S. Ct. 1759, 114 L. Ed. 2d 233, 1991 U.S. LEXIS 2908 (U.S. 1991).

RESEARCH REFERENCES

ALR.

Validity of regulations as to contraceptives or the dissemination of birth control information. 96 A.L.R.2d 955.

Medical malpractice, and measure and element of damages, in connection with sterilization or birth control procedures. 27 A.L.R.3d 906.

Liability of manufacturer or seller for injury or death allegedly caused by use of contraceptive. 70 A.L.R.3d 315.

Validity of sex education programs in public schools. 82 A.L.R.3d 579.

Modern status of views as to general measure of physician's duty to inform patient of risks of proposed treatment. 88 A.L.R.3d 1008.

When statute of limitations begins to run against malpractice action in connection with sterilization or birth control procedures. 93 A.L.R.3d 218.

Medical malpractice: administering or prescribing birth control pills or devices. 9 A.L.R.4th 372.

Misrepresentation regarding sterility or use of birth control. 31 A.L.R.4th 389.

Recoverability of compensatory damages for mental anguish or emotional distress for tortiously causing another's birth. 74 A.L.R.4th 798.

Sexual partner's tort liability to other partner for fraudulent misrepresentation regarding sterility or use of birth control resulting in pregnancy. 2 A.L.R.5th 301.

Parent's child support liability as affected by other party's fraudulent misrepresentation regarding sterility or use of birth control, or refusal to abort pregnancy. 2 A.L.R.5th 337.

Propriety of prophylactic availability programs. 52 A.L.R.5th 477.

Provision of family planning services under Title X of Public Health Service Act (42 USCS secs. 300-300a-8) and implementing regulations. 71 A.L.R. Fed. 961.

Am. Jur.

1 Am. Jur. 2d, Abortion and Birth Control §§ 1 et seq.

Lawyers' Edition.

Supreme Court's views as to validity of laws restricting or prohibiting sale or distribution to minors of particular types of goods or services otherwise available to adults. 52 L. Ed. 2d 892.

CHAPTER 43.

CEMETERIES AND BURIAL GROUNDS

In General. 41-43-1
Cemetery Law. 41-43-31

IN GENERAL

Sec.
41-43-1. Regulation of cemeteries in the vicinity of hospitals; private family cemeteries.
41-43-3. Appointment of trustee for private or family cemetery or burying ground.
41-43-5. Use of vacant portions of lots by not-for-profit cemetery permitted under certain circumstances; notice to potential living heirs of original purchaser; recordkeeping.
41-43-7. Penalty for violation of chapter; appeal.

§ 41-43-1. Regulation of cemeteries in the vicinity of hospitals; private family cemeteries.

(1) No person, firm, association, or corporation shall locate a new public or private cemetery for burial of human beings within five hundred (500) yards of a public or private hospital or other medical facility wherein sick or injured persons are usually kept overnight for medical treatment and rehabilitation, without such person, firm, association, or corporation having first obtained a written order of approval from the board of supervisors if the proposed cemetery or burial ground is located outside the corporate limits of a municipality, or without such person, firm, association, or corporation having first obtained a written order of approval from the governing authorities of the municipality if the proposed cemetery or burial ground is located inside the corporate limits of a municipality.

Any realty used for burial purposes in violation of this subsection shall be deemed a common nuisance, and may be abated by the chancery court upon a petition filed therefor by the district attorney or county attorney, city attorney, attorney for the board of supervisors, or any person or persons aggrieved by the violation of this subsection.

This subsection shall not apply to any established cemeteries or burial grounds which now have human remains interred thereon.

(2) The board of supervisors of any county is authorized and empowered, upon petition and request to do so, to establish or designate the location of any private family cemetery to be located in the county.

HISTORY:

Codes, 1942, § 2890.6; Laws, 1966, ch. 398, § 1; Laws, 1982, ch. 307, eff from and after July 1, 1982.

Cross References —

Effect of law regulating funeral service practice on regulation of cemeteries, cemetery chapels, or cemetery crematories, see § 73-11-63.

Nuisances, generally, see §§ 95-3-1 et seq.

JUDICIAL DECISIONS

1. Authority.

This section does not give a board of supervisors the power to prevent the establishment of a private family cemetery; therefore, a petition to exhume a body that was buried on family land in accordance with the wishes of the decedent was properly denied. McGriggs v. McGriggs, 192 So. 3d 350, 2015 Miss. App. LEXIS 674 (Miss. Ct. App. 2015).

OPINIONS OF THE ATTORNEY GENERAL

Section 41-43-1(2) does not give the board of supervisors the authority to establish or designate the location of any private family cemetery within municipal corporate limits in the county. 1995 Miss. Op. Att'y Gen. 340.

RESEARCH REFERENCES

Am. Jur.

14 Am. Jur. 2d, Cemeteries §§ 10, 13 et seq.

CJS.

14 C.J.S., Cemeteries §§ 11 et seq.

Law Reviews.

1978 Mississippi Supreme Court Review: Torts. 50 Miss. L. J. 137, March 1979.

§ 41-43-3. Appointment of trustee for private or family cemetery or burying ground.

When any donation or bequest is made by any person, company or corporation, of money or property to be used for the maintenance and preservation of any private or family cemetery or burying ground, and no trustee be appointed by such person, company or corporation, or if appointed, the trustee should die, resign, or otherwise become incompetent, the chancellor, on petition of any person having, or feeling, any interest therein, may, in vacation or in term-time, appoint a trustee to administer the trust on such terms as he may deem proper. If a trustee shall improperly administer the trust, he may be removed by the chancellor and another appointed.

HISTORY:

Codes, 1906, § 555; Hemingway's 1917, § 315; 1930, § 362; 1942, § 1273.

Cross References —

Regulation of cemeteries, generally, see §§ 41-43-31 et seq.

Perpetual care cemeteries, see §§ 41-43-37 through 41-43-39.

Cemetery ownership by religious societies, see § 79-11-33.

Effect of burial association law, see § 83-37-33.

JUDICIAL DECISIONS

1. In general.

A lot in a country churchyard where three graves of a family are situated, is a private burying ground. Nolan v. Easley, 214 Miss. 190, 58 So. 2d 491, 1952 Miss. LEXIS 458 (Miss. 1952).

OPINIONS OF THE ATTORNEY GENERAL

A private family cemetery does not have to be set up as a trust. Section 41-43-3 deals only with the situation where a donation or bequest is made to be used for the maintenance and preservation of a private or family cemetery. 1996 Miss. Op. Att'y Gen. 77.

RESEARCH REFERENCES

Am. Jur.	**CJS.**
14 Am. Jur. 2d, Cemeteries §§ 3, 5, 6.	14 C.J.S., Cemeteries §§ 1, 2.

§ 41-43-5. Use of vacant portions of lots by not-for-profit cemetery permitted under certain circumstances; notice to potential living heirs of original purchaser; recordkeeping.

(1) The provisions of this section apply to any not-for-profit cemetery:

(a) In which a lot was sold or reserved to be used for burial plots;

(b) Only a portion of the lot has been used for burial plots;

(c) There is sufficient space for additional burial plots to be located within the same lot;

(d) The owner of the cemetery desires to use the vacant portions of the lot for additional burial plots; and

(e) There are no known heirs of the person who originally purchased or reserved the lot from whom the cemetery may obtain permission to use the vacant portions of the lot for additional burial plots.

(2) The owner of the cemetery first shall make reasonably diligent efforts to identify any living heirs of the person who originally purchased or reserved the lot. If there are any potential living heirs known to the owner of the cemetery, the owner shall mail a notice to those persons at their last known address, informing them that if they do not notify the cemetery within ninety (90) days after the date of the notice, they will be barred from objecting to the cemetery's use of the vacant portions of the lot for additional burial plots after that time.

(3) In addition, the owner of the cemetery shall publish, for three (3) consecutive weeks in some newspaper published or having circulation in the county in which the cemetery is located, a notice that any persons having any claim of ownership to the lot in the cemetery must notify the cemetery within ninety (90) days after the first publication of the notice or they will be barred from objecting to the cemetery's use of vacant portions of the lot for additional burial plots after that time.

(4) If any person notifies the cemetery within the time specified in subsection (2) or (3) of this section, and the cemetery determines that the person has an ownership interest in the lot, then the cemetery may not use the vacant portions of the lot for additional burial plots without the permission of that person. If no person notifies the cemetery within the time specified in subsection (2) or (3) of this section, or if the cemetery determines that a person or persons who timely notified the cemetery does not have an ownership interest in the lot, then the cemetery may use the vacant portions of the lot for additional burial plots, and no claim shall be allowed that the cemetery has used the lot without the permission of an owner of the lot.

(5) The owner of the cemetery shall maintain permanent records documenting the mailed notice and the published notice provided by the cemetery under subsections (2) and (3) of this section.

HISTORY:
Laws, 2009, ch. 388, § 1, eff from and after July 1, 2009.

§ 41-43-7. Penalty for violation of chapter; appeal.

(1) The Secretary of State may impose, following notice and an opportunity for a hearing, monetary penalties not to exceed One Thousand Dollars ($1,000.00) per occurrence for any violation of this chapter or any rule, regulation or order issued by the Secretary of State.

(2) Any person aggrieved by a final order of the Secretary of State may obtain a review of the order in the Chancery Court of the First Judicial District of Hinds County, Mississippi, by filing in the court, within thirty (30) days after the entry of the order, a written petition praying that the order be modified or set aside, in whole or in part. A copy of the petition shall be forthwith served upon the Secretary of State and thereupon the Secretary of State shall certify and file in the court a copy of the filing and evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce or set aside the order, in whole or in part.

HISTORY:
Laws, 2009, ch. 549, § 24; Laws, 2016, ch. 447, § 1, eff from and after July 1, 2016.

CEMETERY LAW

Sec.
41-43-31. Title.
41-43-33. Who is subject to cemetery law.
41-43-35. Designation of cemetery organizations as perpetual care cemeteries.
41-43-37. Operation as perpetual care cemetery; establishment of irrevocable perpetual care trust fund; registration system for perpetual care cemeteries.
41-43-38. Operation as perpetual care cemetery; accounting and reporting requirements; penalties for failure to timely file requisite accountings, records, reports or notices; sale or transfer of perpetual care cemetery; audits; procedure if perpetual care cemetery becomes subject of court ordered receivership.
41-43-39. Operation as perpetual care cemetery; procedure by existing organizations.
41-43-40. Perpetual care cemetery to maintain up-to-date record of persons buried in cemetery or entombed in mausoleum or columbarium; contents.
41-43-41. Nonperpetual care cemetery may become perpetual care cemetery; all cemeteries created after July 1, 2009, to be perpetual care cemeteries unless exempt.
41-43-43. Nonperpetual care cemeteries to call attention to such fact in all sales contracts and deeds.
41-43-45. Lots sold to public to be free from liens; sale or transfer of lots by purchaser.
41-43-47. Cemetery rules and regulations.
41-43-49. Repealed.
41-43-51. Rule against perpetuities inapplicable to perpetual care funds.
41-43-53. Penalty for violations of Section 41-43-31 et seq.; punishment for embezzlement, misapplication or conversion of perpetual care trust funds.
41-43-55. Business records of all perpetual care cemeteries to be available for inspection and examination by Secretary of State; inspection of cemetery sites.
41-43-57. Application for release of trust principal for certain purposes under exceptional circumstances.

§ 41-43-31. Title.

Sections 41-43-31 through 41-43-53 may be cited as the "Cemetery Law."

HISTORY:
Codes, 1942, § 5308-01; Laws, 1958, ch. 481, § 1, eff from and after passage (approved May 6, 1958).

Cross References —
Effect of law regulating funeral service practice on regulation of cemeteries, cemetery chapels, or cemetery crematories, see § 73-11-63.

RESEARCH REFERENCES

ALR.
Construction and application of graverobbing statutes. 52 A.L.R.3d 701.

Am. Jur.
14 Am. Jur. 2d, Cemeteries §§ 1, 2 et seq.

§ 41-43-33. Who is subject to cemetery law.

Any person, partnership, corporation or other organization organized or engaging in business under the laws of the State of Mississippi, whether for profit or not-for-profit, or wheresoever organized and doing business in the State of Mississippi, of owning, maintaining or operating a cemetery, providing lots or other interment space therein for the remains of human bodies, except such organizations and cemeteries that are affiliated with or owned by churches or religious societies, established fraternal societies, municipalities, other political subdivisions of the State of Mississippi, or family cemeteries or family burial grounds, and community cemeteries that provide burial lots at no charge, or sell burial lots to the public, shall be subject to the provisions of Section 41-43-31 et seq.

From and after July 1, 2009, all new cemeteries must be perpetual care cemeteries unless exempt under the provisions of this section.

HISTORY:
Codes, 1942, § 5308-02; Laws, 1958, ch. 481, § 2; Laws, 2009, ch. 549, § 17, eff from and after July 1, 2009.

OPINIONS OF THE ATTORNEY GENERAL

Since Section 41-43-33 only deals with people, partnerships or corporations engaged in the cemetery business, a private family cemetery which would not be selling would not be subject to the cemetery law. 1996 Miss. Op. Att'y Gen. 77.

RESEARCH REFERENCES

Am. Jur.
14 Am. Jur. 2d, Cemeteries §§ 4 et seq.

CJS.
14 C.J.S., Cemeteries §§ 2 et seq.

§ 41-43-35. Designation of cemetery organizations as perpetual care cemeteries.

All such organizations subject to the provisions of Section 41-43-31 et seq. shall be, for the purposes hereof, designated as "perpetual care cemeteries."

HISTORY:
Codes, 1942, § 5308-03; Laws, 1958, ch. 481, § 3; Laws, 2009, ch. 549, § 18, eff from and after July 1, 2009.

Cross References —

Trust business charter exemption, see § 81-27-1.102

§ 41-43-37. Operation as perpetual care cemetery; establishment of irrevocable perpetual care trust fund; registration system for perpetual care cemeteries.

(1) The owner of every cemetery, subject to the provisions of Section 41-43-31 et seq., that is organized, begins or continues to do business in the State of Mississippi after July 1, 2009, shall provide for the creation and establishment of an irrevocable perpetual care trust fund, the principal of which shall permanently remain intact except as hereinafter provided and only the income thereof shall be devoted to the perpetual care of the cemetery. The perpetual care trust fund shall not be subject to the claims of the cemetery's creditors and shall not be used as collateral, pledged, encumbered or placed at risk. This fund shall be created and established as follows:

(a) In respect to a cemetery for earth burials, by the application and payment thereto of an amount equivalent to fifteen percent (15%) of the sale price, or Forty Cents (40¢) per square foot of ground interment rights sold, whichever is greater;

(b) In respect to an above-ground community or public mausoleum, by the application and payment thereto of an amount equivalent to five percent (5%) of the sale price, or Fifty Dollars ($50.00) per crypt sold, whichever is greater;

(c) In respect to the placement of an above-ground, free-standing or private mausoleum, by the application and payment thereof of an amount equivalent to fifteen percent (15%) of the sale price for the ground interment right upon which the private mausoleum is installed and five percent (5%) of the sales price as determined by the customer's invoice for the purchase price of the private mausoleum; and

(d) In respect to a community columbarium, by the application and payment thereto of an amount equivalent to five percent (5%) of the sale price, or Ten Dollars ($10.00) per niche sold, whichever is greater.

For any sale of a lot for an earth burial, mausoleum crypt or columbarium niche in which payment is made by the purchaser on an installment basis over time, the percentage required to be trusted shall be paid into the perpetual care trust fund calculated on each payment.

(2) From the sale price the owner shall pay to the perpetual care fund an amount in proportion to the requirements in subsection (1) of this section, which payment shall be in cash, check, money order or electronic transfer and shall be deposited with the custodian or trustee of the fund not later than the fifth day of the following month from when funds are received.

(3) If the perpetual care trust fund principal is Fifty Thousand Dollars ($50,000.00) or less, a perpetual care cemetery may maintain certificates of deposit that mature every thirty (30) days issued by an institution whose deposits are insured by the Federal Deposit Insurance Corporation. Certifi-

cates of deposits held by a cemetery for perpetual care under this subsection shall renew automatically with all earned interest added to principal for each successive renewal. Collections owed to trust from sales under subsection (1) of this section shall be added upon the next maturity date of the certificate rather than the fifth day of the following month as required by subsection (2) of this section. Certificates of deposit meeting the requirements of this subsection shall contain the words, "For Perpetual Care," in the caption of the certificate. Each perpetual care cemetery electing to maintain certificates of deposit under this subsection shall file documentation from the issuer with the Office of the Secretary of State with the submission of the annual report. Once the perpetual care principal from the cemetery's operations exceeds Fifty Thousand Dollars ($50,000.00), such funds shall be held in an irrevocable trust managed by a trustee and governed by a trust instrument.

(4) In addition to the provisions of subsections (1) and (2) of this section, any cemetery organized after July 1, 2009, or any mausoleum or columbarium that is built at any location other than upon property owned by an existing cemetery after that date, whether it is by incorporation, association, individually or by any other means, or having its first burial after that date, shall, before disposing of any burial lot or right or making any sale thereof and/or making its first burial, cause to be deposited the sum of Twenty-five Thousand Dollars ($25,000.00) in cash into an irrevocable perpetual care trust fund as provided in subsection (1) of this section for the maintenance of the cemetery.

(5) Whenever the cemetery has deposited in the perpetual care fund, as required by this section, a sum amounting to Fifty Thousand Dollars ($50,000.00), it shall submit proof of that fact to its trustee, and it shall be the duty of the trustee to thereupon pay over to the cemetery the amount of Twenty-five Thousand Dollars ($25,000.00) so originally deposited by it in the perpetual care fund.

(6) The perpetual care fund shall be permanently set aside in trust to be administered under the jurisdiction of the Secretary of State. The Secretary of State shall have full jurisdiction over the reports and accounting of trustees and the amount of a surety bond required, if any. The trust officer or trustee responsible for the investment of funds shall be affiliated with an established bank, trust company, other financial institution or financial services company. Only the income from the fund shall be used for the care and maintenance of the cemetery for which it was established.

(7) Each geographic location of a cemetery shall constitute a separate and distinct cemetery for the purpose of interpretation and application of this section.

(8) The Secretary of State shall develop and implement a registration system for perpetual care cemeteries subject to this chapter. The Secretary of State is authorized to promulgate rules and regulations for the development and implementation of a statewide registry and to collect a registration fee not to exceed Twenty-five Dollars ($25.00) per year to be paid at the same time as the reports and accountings required by Section 41-43-38 are due.

(9) To assist with the development of a statewide registry of perpetual care cemeteries, the county boards of supervisors in conjunction with the

chancery clerks shall provide the Secretary of State with a list of all perpetual care cemeteries and other pertinent information regarding perpetual care cemeteries situated in their respective counties no later than October 31, 2009.

HISTORY:

Codes, 1942, § 5308-04; Laws, 1958, ch. 481, § 4; Laws, 1966, ch. 375, § 1; Laws, 1982, ch. 371, § 1; Laws, 2009, ch. 549, § 19; Laws, 2012, ch. 565, § 1, eff from and after July 1, 2012.

Cross References —

Appointment of trustee for private or family cemetery or burying ground, see § 41-43-3.

Accounting and reporting requirements for perpetual care cemeteries, see § 41-43-38.

Qualifications for cemetery in existence prior to May 6, 1958 to be perpetual care cemetery, see § 41-43-39.

RESEARCH REFERENCES

ALR.

Validity, construction, and application of statutes or ordinances regulating perpetual-care trust funds of cemeteries and mausoleums. 54 A.L.R.5th 681.

Am. Jur.

14 Am. Jur. 2d, Cemeteries § 8.

4A Am. Jur. Legal Forms 2d, Cemeteries §§ 54:221-54:224 (agreement for perpetual care).

4A Am. Jur. Legal Forms 2d, Cemeteries §§ 54:231, 54:232 (testamentary provisions for perpetual care).

CJS.

14 C.J.S., Cemeteries § 8.

§ 41-43-38. Operation as perpetual care cemetery; accounting and reporting requirements; penalties for failure to timely file requisite accountings, records, reports or notices; sale or transfer of perpetual care cemetery; audits; procedure if perpetual care cemetery becomes subject of court ordered receivership.

(1) The provisions of this section shall apply to every cemetery that is required to establish and maintain a perpetual care trust fund as provided in Section 41-43-37.

(2) By March 31 of each year, each perpetual care cemetery not exempt by Section 41-43-33 shall file with the Secretary of State the following information:

(a) The name of the cemetery, the date of incorporation, if incorporated, and the location of the cemetery or cemeteries owned;

(b) The amounts of sales of cemetery lots, grave spaces, mausoleum crypts or columbarium niches for which payment has been made in full or deeds of conveyance or perpetual easements issued thereon during the preceding calendar year;

(c) The amounts paid into the perpetual care fund, and the income earned therefrom during the preceding calendar year;

(d) The number of acres embraced within each cemetery and held by the cemetery for cemetery purposes; and

(e) The names and addresses of the owners of the cemetery or the officers and directors of the corporation and any change of control that occurred during the preceding calendar year.

(3) The custodian or trustee of the perpetual care fund of each cemetery shall annually prepare and file with the Secretary of State a detailed accounting and report of the fund on or before March 31 of each year for the preceding calendar year. The accounting and report shall contain a properly itemized description of the securities in which the monies of the perpetual care fund are invested, the fund value, and any changes in the investment portfolio from the prior year's report. The accounting and report shall be at all times available to inspection and copy by any owner of a burial right in the cemetery, or the family, legal representative or next of kin of the owner, at the usual place for transacting the regular business of the cemetery.

For each day that the report and accounting required by subsections (2) and (3) of this section are late, the Secretary of State is authorized to charge a late fee of Ten Dollars ($10.00) per day.

(4) As a condition to the transfer of any perpetual care trust fund monies from one (1) trustee or trust institution to another, the cemetery for which the fund is maintained shall, not less than thirty (30) days before the time when the transfer is to occur, file with the Secretary of State a written notice of intent to transfer accompanied with a letter of intent to receive the trust fund monies from the trustee or trust institution to which the trust fund monies are to be transferred. The fund monies shall be transferred directly from the existing custodian or trustee to the receiving custodian or trustee only after approval has been issued in writing by the Secretary of State or his representative.

(5) Before any sale or transfer of a perpetual care cemetery or a controlling interest therein, an independent audit of the perpetual care trust fund shall be performed at the expense of the seller and/or buyer or transferor and transferee and filed with the Secretary of State. The audit shall be current within thirty (30) days of the proposed sale or transfer. No sale or transfer of any perpetual care cemetery shall occur until approved in writing by the Secretary of State or his representative.

(6) The Secretary of State shall, upon the failure to timely receive any of the records, reports or notices provided for in this section, immediately give notice by certified letter or hand delivery to the last known cemetery owner or owners, or, if incorporated, its officers and directors, at its or their last known address, that those records, reports or notices have not been received. Failure of those persons to file the records, reports or notices within fifteen (15) days after receipt of the certified letter or hand delivery shall, in the absence of clear justification or excuse, constitute a misdemeanor and each owner of the cemetery and, if incorporated, its officers and directors, shall be subject to the penalties provided for in Section 41-43-53.

(7) Whenever it reasonably appears to the Secretary of State, any owner or purchaser, or the family, legal representative or next of kin of any such owner or purchaser, of any lot, plot, grave, crypt, niche or burial space within a perpetual care cemetery, that (a) the cemetery is insolvent or about to become insolvent; or (b) no perpetual care trust fund has been established for the cemetery or, if established, the trust fund does not contain the funds as are required to be contained therein, that party may bring an action in the

chancery court in the county in which the cemetery is located. Upon a proper showing, the court shall order a private audit and examination of any perpetual care trust fund of the cemetery and of all the books, records and papers employed in the transaction of the cemetery business.

If the audit and examination show that the cemetery is insolvent or is about to become insolvent, or that a sufficient trust fund is not established or being maintained for the cemetery, the court shall exercise any jurisdiction and make and issue any orders and decrees as may be necessary to correct and enforce compliance with the provisions of Section 41-43-31 et seq. and all such other orders and decrees as shall be just, equitable and in the public interest, including the appointment of receivers to continue or terminate the operation of the business.

(8) All the necessary expenses of any examination or audit performed or court proceedings conducted under the provisions of subsection (7) of this section shall be paid by the cemetery owner or owners or, if incorporated, its officers and directors, and if a sale of any cemetery is ordered by the court, the proceeds of the sale shall first be applied to the costs expended under the provisions of subsection (7) of this section.

(9) Whenever a cemetery subject to the provisions of Section 41-43-31 et seq. becomes the subject of a court order of receivership, the receiver shall determine as soon as practical if the income of the receivership estate is sufficient for the operation of the cemetery including the upkeep and maintenance of cemetery grounds. If the receiver determines that insufficient cash flow or income exists to provide maintenance and upkeep, the receiver shall notify the mayor of the municipality in which the cemetery is located or the president of the board of supervisors for cemeteries located outside of a municipality, by certified mail return receipt requested, that insufficient income exists for the receivership estate. Upon receipt of that notice, the municipality or county shall appoint a cemetery maintenance committee of no more than seven (7) persons who have an interest in the cemetery through ownership of interment or entombment rights, genealogical or historical reasons. The committee may solicit donations and raise funds by any lawful means from private citizens and private sources. The committee may establish a trust fund to supply continuing needs over a long period of time. However, the receiver shall have the authority to determine the maintenance and upkeep to be performed, the frequency of upkeep and the selection of workers or contractors to accomplish maintenance and upkeep. If, at the conclusion of the receivership estate, excess funds are on deposit with the maintenance committee, the receiver is authorized to apply excess funds to any short-term or long-term capital improvement by which the cemetery would benefit.

HISTORY:

Laws, 1982, ch. 371, § 2; Laws, 2009, ch. 549, § 20; Laws, 2011, ch. 362, § 1, eff from and after July 1, 2011.

Joint Legislative Committee Note —

In 2009, an error in a statutory reference in subsection (8) was corrected at the direction of co-counsel of the Joint Legislative Committee on Compilation, Revision and Publication by substituting "...subsection (7) of this section..." for "...subsection (8) of this section..." both times it appears. The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

Cross References —

Qualifications for cemetery in existence prior to May 6, 1958 to be perpetual care cemetery, see § 41-43-39.

JUDICIAL DECISIONS

ANALYSIS

I. Under Current Law.

1.-5. [Reserved for future use].

II. Under Former § 41-43-49.

6. In general.

I. Under Current Law.

1.-5. [Reserved for future use].

II. Under Former § 41-43-49.

6. In general.

The chancery court properly authorized a sale of a portion of land conveyed for public burial purposes, even if the trustee of the land had no express power to sell, where the business owned by the trustee was in extreme financial difficulties and the land in question was threatened with foreclosure, and with the sale accomplished, all liens would be released and a substantial fund would be created for continued operation of the cemetery; courts of equity have an inherent power to protect trusts and may order a sale of part of the trust property if necessary for the execution of trust purposes. Hengen v. Perpetual Care Cemeteries, Inc., 230 So. 2d 795, 1970 Miss. LEXIS 1563 (Miss. 1970).

OPINIONS OF THE ATTORNEY GENERAL

Where a cemetery was never fully established and set up as a perpetual care cemetery, a court had jurisdiction and the authority to dismantle the perpetual care status of this cemetery, dissolve the corporate charter, and refund to the purchasers who had duly filed their paid receipts and contracts in the court whatever monies available. 2000 Miss. Op. Att'y Gen. 602.

RESEARCH REFERENCES

ALR.

Validity, construction, and application of statutes or ordinances regulating perpetual-care trust funds of cemeteries and mausoleums. 54 A.L.R.5th 681.

Am. Jur.

14 Am. Jur. 2d, Cemeteries § 8.

CJS.

14 C.J.S., Cemeteries §§ 2, 9.

§ 41-43-39. Operation as perpetual care cemetery; procedure by existing organizations.

Any such organization, subject to the provisions of Sections 41-43-31 through 41-43-53, which is organized and engaged in business prior to May 6, 1958, shall be a perpetual care cemetery if:

(1) It shall, by July 5, 1958, have placed the entire principal and all accrued interest in any perpetual care fund then in its possession, or in the possession of trustees designated by it, in trust, to be administered as set forth in Sections 41-43-37 and 41-43-38. Should such perpetual care fund be less than ten percent (10%) of the gross selling price of all burial spaces, crypts or inurnment niches sold, such organization shall have deposited into the perpetual care fund such additional money as may be necessary to cause the fund to be ten percent (10%) of all gross sales prior to May 6, 1958.

(2) It shall, at all times after May 6, 1958, comply with the require-

ments of a perpetual care cemetery as set forth in Sections 41-43-37 and 41-43-38.

HISTORY:
Codes, 1942, § 5308-05; Laws, 1958, ch. 481, § 5; Laws, 1966, ch. 375, § 2; Laws, 1982, ch. 371, § 3, eff from and after July 1, 1982.

RESEARCH REFERENCES

ALR.
Validity, construction, and application of statutes or ordinances regulating perpetual-care trust funds of cemeteries and mausoleums. 54 A.L.R.5th 681.

Am. Jur.
14 Am. Jur. 2d, Cemeteries, § 8.

§ 41-43-40. Perpetual care cemetery to maintain up-to-date record of persons buried in cemetery or entombed in mausoleum or columbarium; contents.

Every perpetual care cemetery shall maintain continuously and at all times an up-to-date record of the persons buried in the cemetery or entombed within a mausoleum or columbarium; the date of burial or entombment; a map of the designated lot for burial or entombment as well as a map of lots, burial spaces, mausoleum crypts or columbarium niches that have been sold. The map or plat shall also contain up-to-date designations indicating committed or planned designations of burial lots, crypt, niche or mausoleum spaces for future use. Additionally, the Secretary of State may require those maps to be filed with the Secretary of State in any intervals as the Secretary of State may establish by rule or regulation.

HISTORY:
Laws, 2009, ch. 549, § 25, eff from and after July 1, 2009.

§ 41-43-41. Nonperpetual care cemetery may become perpetual care cemetery; all cemeteries created after July 1, 2009, to be perpetual care cemeteries unless exempt.

Any nonperpetual care cemetery, after May 6, 1958, may become a perpetual care cemetery by complying with the requirement for a perpetual care cemetery as provided in Section 41-43-31 et seq. From and after July 1, 2009, all cemeteries created shall be perpetual care cemeteries unless exempt under the provisions of Section 41-43-31 et seq.

HISTORY:
Codes, 1942, § 5308-06; Laws, 1958, ch. 481, § 6; Laws, 2009, ch. 549, § 21, eff from and after July 1, 2009.

§ 41-43-43. Nonperpetual care cemeteries to call attention to such fact in all sales contracts and deeds.

All nonperpetual care cemeteries shall have printed at the top of all contracts of sales and deeds the words “this is a nonperpetual care cemetery.”

HISTORY:
Codes, 1942, § 5308-06; Laws, 1958, ch. 481, § 6, eff from and after passage (approved May 6, 1958).

§ 41-43-45. Lots sold to public to be free from liens; sale or transfer of lots by purchaser.

All lots and grave spaces offered for sale to the public shall be free and clear of liens or encumbrances. On payment of the purchase price, the purchaser shall be delivered a warranty deed or a perpetual easement for interment purposes.

Only the owner of a cemetery, or its agents, may sell or convey lots, plots, or parts thereof.

The purchaser of any lot, plot or part thereof may sell or transfer the same by giving notice thereof to the cemetery authorities or organization. Before acknowledging any transfer as valid, said cemetery authorities or organization may require the transferee to personally appear in the cemetery's principal place of business to accept any deed or transfer rights to the property conveyed, in order that the transfer may be properly enrolled on the books of the cemetery. A memorandum of all transfers shall be made on the books of the cemetery corporation or organization.

HISTORY:
Codes, 1942, § 5308-07; Laws, 1958, ch. 481, § 7, eff from and after passage (approved May 6, 1958).

RESEARCH REFERENCES

Am. Jur.
14 Am. Jur. 2d, Cemeteries §§ 28 et seq.
4B Am. Jur. Legal Forms 2d, Cemeteries § 54:91 (contract for sale of burial lot, memorials, markers, services, and maintenance).
4B Am. Jur. Legal Forms 2d, Cemeteries §§ 54:101-54:104 (conveyances of cemetery lots).
5A Am. Jur. Pl & Pr Forms (Rev), Cemeteries, Forms 21 et seq. (dedication and use of land for cemetery purposes).

CJS.
14 C.J.S., Cemeteries § 25.

§ 41-43-47. Cemetery rules and regulations.

The owner of any cemetery may make and enforce reasonable rules and regulations for the use, care, control, management, restriction and protection of such cemetery.

HISTORY:
Codes, 1942, § 5308-08; Laws, 1958, ch. 481, § 8, eff from and after passage (approved May 6, 1958).

RESEARCH REFERENCES

Am. Jur.
14 Am. Jur. 2d, Cemeteries §§ 1, 2 et seq.
4B Am. Jur. Legal Forms 2d, Cemeteries §§ 54:26 et seq (operation and management of cemeteries).
4A Am. Jur. Legal Forms 2d, Cemeteries § 54:211 (rules of perpetual care associations).

CJS.
14 C.J.S., Cemeteries § 25.

§ 41-43-49. Repealed.

Repealed by Laws, 1982, ch. 371, § 7, eff from and after July 1, 1982.
[Codes, 1942, § 5308-09; Laws, 1958, ch. 481, § 9]

Editor's Notes —
Former § 41-43-49 required all perpetual care cemeteries to file an annual accounting with the chancery court.

§ 41-43-51. Rule against perpetuities inapplicable to perpetual care funds.

The rule against perpetuities shall not be applicable to perpetual care funds provided for in Sections 41-43-31 through 41-43-53.

HISTORY:
Codes, 1942, § 5308-10; Laws, 1958, ch. 481, § 10, eff from and after passage (approved May 6, 1958).

RESEARCH REFERENCES

Am. Jur.
15 Am. Jur. 2d, Charities § 18 et seq.
61 Am. Jur. 2d, Perpetuities and Restraints on Alienation §§ 1 et seq.

CJS.
70 C.J.S., Perpetuities §§ 18 et seq.

§ 41-43-53. Penalty for violations of Section 41-43-31 et seq.; punishment for embezzlement, misapplication or conversion of perpetual care trust funds.

(1) Violation of any of the provisions of Sections 41-43-31 through 41-43-53 by any person, partnership, corporation or organization shall be punished by a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00) or by imprisonment in the county jail for a period not exceeding one (1) year, or by both.

(2)(a) Any person, partnership, corporation or organization that embezzles or fraudulently or knowingly and willfully misapplies or converts perpetual care trust funds shall, upon conviction, be punished as follows:

(i) If the amount embezzled, misapplied or converted is less than One Thousand Dollars ($1,000.00), by a fine of not more than Five Hundred Dollars ($500.00) and confinement in the county jail not more than one (1) year; or

(ii) If the amount embezzled, misapplied or converted is One Thousand Dollars ($1,000.00) or more, by imprisonment in the custody of the Mississippi Department of Corrections for a term of not more than ten (10) years.

(b) Each such violation shall constitute a separate offense.

HISTORY:
Codes, 1942, § 5308-11; Laws, 1958, ch. 481, § 11; Laws, 1981, ch. 432, § 1, eff from and after passage (approved March 25, 1981); Laws, 2018, ch. 323, § 1, eff from and after July 1, 2018.

Amendment Notes —
The 2018 amendment added (2).

Cross References —
Application of penalties in this section to

failure to file required records, reports or notices, see § 41-43-38.

§ 41-43-55. Business records of all perpetual care cemeteries to be available for inspection and examination by Secretary of State; inspection of cemetery sites.

The business records of any perpetual care cemetery, whether registered or not, the records of its financial institution, third-party administrator, or the trustee's records related to the perpetual care cemetery shall be available for inspection and examination by the Secretary of State's examiners at all reasonable times, whether those records are located within this state or outside this state. The Secretary of State's examiners are authorized access to inspect cemetery sites subject to or potentially subject to this chapter wherever the same may be located.

HISTORY:
Laws, 2009, ch. 549, § 22, eff from and after July 1, 2009.

§ 41-43-57. Application for release of trust principal for certain purposes under exceptional circumstances.

In exceptional circumstances only, a perpetual care owner can make an application to the Secretary of State for an order directing the trustee to release trust principal for the extended care, maintenance or improvements to the perpetual care cemetery for which interest funds are insufficient. Before issuing such an order, the Secretary of State shall satisfy himself that the request is for a major capital expenditure that will advance the perpetual care life of the cemetery without undue risk to the solvency of the perpetual care trust fund. Consistent with this section, this shall be the only instance in which a perpetual care trust corpus may be utilized for cemetery maintenance and improvements. In the consideration of the application, the Secretary of State may require the production of any records deemed necessary and relevant to the cemetery's application for a major capital expenditure.

HISTORY:
Laws, 2009, ch. 549, § 23, eff from and after July 1, 2009.

CHAPTER 45.

SEXUAL STERILIZATION [REPEALED]

Sec.
41-45-1 through 41-45-19. l Repealed.

§§ 41-45-1 through 41-45-19. Repealed.

Repealed by Laws, 2008, ch. 442, § 50, effective from and after July 1, 2008.

§ 41-45-1. [Codes, 1930, § 4602; 1942, § 6957; Laws, 1928, ch. 294; Laws, 1984, ch. 472, § 5, eff from and after July 1, 1984.]

§ 41-45-3. [Codes, 1930, § 4603; 1942, § 6958; Laws, 1928, ch. 294.]

§ 41-45-5. [Codes, 1930, § 4603; 1942, § 6958; Laws, 1928, ch. 294.]

§ 41-45-7. [Codes, 1930, § 4603; 1942, § 6958; Laws, 1928, ch. 294.]

§ 41-45-9. [Codes, 1930, § 4604; 1942, § 6959; Laws, 1928, ch. 294; Laws, 1984, ch. 472, § 6, eff from and after July 1, 1984.]

§ 41-45-11. [Codes, 1930, § 4605; 1942, § 6960; Laws, 1928, ch. 294.]

§ 41-45-13. [Codes, 1930, § 4606; 1942, § 6961; Laws, 1928, ch. 294.]

§ 41-45-15. [Codes, 1930, § 4607; 1942, § 6962; Laws, 1928, ch. 294.]

§ 41-45-17. [Codes, 1930, § 4608; 1942, § 6963; Laws, 1928, ch. 294.]

§ 41-45-19. [Codes, 1930, § 4609; 1942, § 6964; Laws, 1928, ch. 294.]

Editor's Notes —

Former §§ 41-45-1 through 41-45-19 authorized the sterilization of mentally ill and mentally retarded patients, provided the process for ordering the sterilization of the patients, provided an appeal process, and limited the civil and criminal liability of persons legally participating in the process of sterilizing the patients.

CHAPTER 47.

TRANSPORTATION AND POSSESSION OF PARAKEETS AND OTHER BIRDS [REPEALED]

Sec.
41-47-1 through 41-47-17. Repealed.

§§ 41-47-1 through 41-47-17. Repealed.

Repealed by Laws, 1976, ch. 301, eff from and after Feb 12, 1976.
[Laws, 1956, ch. 307, §§ 1-9]

Editor's Notes —

Former § 41-47-1 required annual registration with the county health officer by persons breeding, raising, trading or dealing in birds of the budgerigar family.

Former § 41-47-3 called for the inspection of premises where budgerigars are kept, and for sanctions.

Former § 41-47-5 provided for the removal and isolation of birds suspected of having had contact with psittacosis, and for the laboratory examination of such birds.

Former § 41-47-7 required imported budgerigars to be leg banded for identification.

Former § 41-47-9 required budgerigars sold as pets to be leg banded for identification.

Former § 41-47-11 exempted from the leg banding requirements of the chapter birds in the possession of their owners and brought into the state for certain specified purposes.

Former § 41-47-13 contained shipping requirements for birds shipped into Mississippi.

Former § 41-47-15 regulated the housing and keeping of budgerigars in certain types of public establishments.

Former § 41-47-17 prohibited the transfer of birds afflicted with the disease, French Moult.

CHAPTER 49.

REGULATION OF HOTELS AND INNKEEPERS

Sec.

41-49-1. Chapter to be enforced by State Board of Health.
41-49-3. "Hotel" defined.
41-49-5. Premises to be kept in clean and sanitary condition.
41-49-7. Copy of chapter to be posted in all hotels and inns.
41-49-9. Penalty.

§ 41-49-1. Chapter to be enforced by State Board of Health.

It shall be the duty of the Mississippi State Board of Health to enforce the provisions of this chapter. In order to discharge its powers and duties under this statute, the board may promulgate such rules and regulations as are reasonable and necessary.

HISTORY:

Codes, Hemingway's 1917, § 2062; 1930, § 5102; 1942, § 7147; Laws, 1910, ch. 163; Laws, 1983, ch. 522, § 25, eff from and after July 1, 1983.

Cross References —

State Board of Health Generally, see §§ 41-3 et seq.

General duties of State Board of Health, see § 41-3-15.

Duties of county health officer, see § 41-3-41.

Fire protection and safety regulations for hotels, see §§ 45-11-21 et seq.

Regulation of hotel business, see §§ 75-73-1 et seq.

RESEARCH REFERENCES

ALR.

Liability of innkeeper to guest for injuries occasioned by defects in furnishings or other conditions in room or suite. 18 A.L.R.2d 973.

Liability of hotel, motel, or similar establishment for damage to or loss of guest's automobile left on premises. 52 A.L.R.3d 433.

Am. Jur.

40A Am. Jur. 2d, Hotels, Motels, and Restaurants §§ 25 et seq.

13A Am. Jur. Pl & Pr Forms (Rev), Hotels, Motels and Restaurants, Form 48 (complaint, petition, or declaration – injury to guest – premises infected with contagious disease).

6 Am. Jur. Proof of Facts, Innkeepers, Proof No. 1 (status of premises as hotel).

CJS.

43A C.J.S., Inns, Hotels, and Eating Places § 18.

Lawyers' Edition.

Regulation of hotel, motel, or similar lodging establishment as violating due process clause or equal protection clause of Federal Constitution – Supreme Court cases. 107 L. Ed. 2d 1151.

§ 41-49-3. "Hotel" defined.

The term "hotel" shall mean and include any entity or individual engaged in the business of furnishing or providing one or more rooms intended or designed for dwelling, lodging or sleeping purposes that at any one time will accommodate transient guests and that are known to the trade as such and includes every building or other structure kept, used, maintained or advertised as, or held out to the public to be, a place where sleeping accommodations are supplied for pay or other consideration to transient guests regardless of the number of rooms, units, suites or cabins available, excluding nursing homes or institutions for the aged or infirm as defined in Section 43-11-1.

HISTORY:
Codes, Hemingway's 1917, § 2063; 1930, § 5103; 1942, § 7148; Laws, 1910, ch. 163; Laws, 1983, ch. 522, § 26; Laws, 2007, ch. 526, § 1, eff from and after passage (approved Apr. 18, 2007).

RESEARCH REFERENCES

Am. Jur.
6 Am. Jur. Proof of Facts, Innkeepers, Proof No. 1 (status of premises as hotel).

Lawyers' Edition.
Regulation of hotel, motel, or similar lodging establishment as violating due process clause or equal protection clause of Federal Constitution – Supreme Court cases. 107 L. Ed. 2d 1151.

§ 41-49-5. Premises to be kept in clean and sanitary condition.

It shall be the duty of every keeper, manager or person in charge of the conduct of any hotel or inn in this state to keep all of the rooms used in connection with such hotel, or provided for the use of guests, in clean and sanitary condition; and to provide each guest with effective protection against flies, mosquitoes and other vermin.

HISTORY:
Codes, Hemingway's 1917, § 2064; 1930, § 5104; 1942, § 7149; Laws, 1910, ch. 163; Laws, 1983, ch. 522, § 27, eff from and after July 1, 1983.

Cross References —
Disinfection and sanitation of buildings, generally, see §§ 41-25-1 et seq.

RESEARCH REFERENCES

Am. Jur.
40A Am. Jur. 2d, Hotels, Motels, and Restaurants §§ 40 et seq.
6 Am. Jur. Proof of Facts, Innkeepers, Proof No. 1 (status of premises as hotel).

CJS.
43A C.J.S., Inns, Hotels, and Eating Places § 12.

Lawyers' Edition.
Regulation of hotel, motel, or similar lodging establishment as violating due process clause or equal protection clause of Federal Constitution – Supreme Court cases. 107 L. Ed. 2d 1151.

§ 41-49-7. Copy of chapter to be posted in all hotels and inns.

A copy of Sections 41-49-1 through 41-49-5, 41-49-9, shall be posted and kept posted in a conspicuous place in the general office or lobby, provided for the use of guests and patrons of every public inn and hotel.

HISTORY:
Codes, Hemingway's 1917, § 2065; 1930, § 5105; 1942, § 7150; Laws, 1910, ch. 163.

RESEARCH REFERENCES

Am. Jur.
9A Am. Jur. Legal Forms 2d, Hotels, Motels, and Restaurants § 137:14 (notice of hotel or motel rules).

6 Am. Jur. Proof of Facts, Innkeepers, Proof No. 1 (status of premises as hotel).

§ 41-49-9. Penalty.

Any owner, manager or person in charge of a hotel who shall fail, neglect or refuse to comply with any of Sections 41-49-1 through 41-49-7, or with any applicable rules or regulations of the state board of health, shall be guilty of a misdemeanor, and on conviction shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00). Each day's failure, neglect or refusal shall constitute a separate offense, and may be punished as such.

HISTORY:

Codes, Hemingway's 1917, § 2065; 1930, § 5106; 1942, § 7151; Laws, 1910, ch. 163; Laws, 1983, ch. 522, § 28, eff from and after July 1, 1983.

Cross References —

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.

6 Am. Jur. Proof of Facts, Innkeepers, Proof No. 1 (status of premises as hotel).

CJS.

43A C.J.S., Inns, Hotels, and Eating Places §§ 21, 22.

Lawyers' Edition.

Regulation of hotel, motel, or similar lodging establishment as violating due process clause or equal protection clause of Federal Constitution – Supreme Court cases. 107 L. Ed. 2d 1151.

CHAPTER 51.

ANIMAL AND POULTRY BY-PRODUCTS DISPOSAL OR RENDERING PLANTS

Sec.
41-51-1. Short title.
41-51-3. Declaration of public policy.
41-51-5. Definitions.
41-51-7. Persons, matters or vocations not affected by chapter.
41-51-9. Powers and duties of the commissioner.
41-51-11. Regulation of transportation and storage.
41-51-13. Application for license to operate plant; fees.
41-51-15. Inspection of plant; issuance and term of licenses.
41-51-17. Additional inspections of non-complying applicants; fees therefor.
41-51-19. Location of plants.
41-51-21. When plant may be deemed suitable or sanitary.
41-51-23. Annual inspection of plant.
41-51-25. Proceedings to suspend or revoke license.
41-51-27. Recorded hearing.
41-51-29. Appeals.
41-51-31. Penalties.
41-51-33. Injunctive relief.

§ 41-51-1. Short title.

This chapter may be cited as The Animal and Poultry By-Products Disposal Law of 1964.

HISTORY:

Codes, 1942, § 4575-101; Laws, 1964, ch. 214, § 1, eff from and after passage (approved March 26, 1964).

Cross References —

Immunity of agricultural operations from nuisance actions, see § 95-3-29.

OPINIONS OF THE ATTORNEY GENERAL

A plant which obtains chicken litter of live chickens from poultry growers to convert the litter into commercial feed for cattle is not a "disposal plant" nor a "rendering plant" as defined in Section 41-51-5. Therefore, such a plant would not be subject to the provisions of Section 41-51-19 nor to any other provisions of the animal and poultry by-products disposal law of 1964, as set out in Section 41-51-1. 1996 Miss. Op. Att'y Gen. 284.

§ 41-51-3. Declaration of public policy.

It is hereby declared to be the public policy of the State of Mississippi, acting through its legislature, to control and regulate the transportation over the highways of this state and the disposal of poultry by-products, slaughter house offal and wastes, and meat processing plant bones, meat scraps, fats, and all otherwise inedible meats and meat products, and the carcasses of dead animals, not slaughtered and intended for human food, to the end that the spread of poultry and animal diseases in this state shall be controlled and also that the public health and welfare of the citizens of this state shall be conserved and protected against dangers, annoyances and nuisances that might arise from such poultry by-products and carcasses or from such transportation and disposal thereof, if the same be not regulated by law. This chapter is designed to effectuate such purposes and public policy, through the exercise of the police powers of the state. This chapter shall be liberally construed to effect such policy and to promote such objects.

HISTORY:
Codes, 1942, § 4575-103; Laws, 1964, ch. 214, § 3; Laws, 1966, ch. 232, § 2, eff from and after passage (approved May 31, 1966).

RESEARCH REFERENCES

CJS.
3A C.J.S., Animals §§ 174-177.

§ 41-51-5. Definitions.

For purposes of this chapter, the words and terms used herein shall have ascribed to them the following meanings:

(a) The term "disposal plant," or "rendering plant," or "plant" shall apply to and include any plant and all equipment thereof described or referred to in any section of this chapter that is constructed and intended to be operated for the disposal of poultry by-products, slaughter house offal and wastes, and meat processing plant bones, meat scraps, fats, and all otherwise inedible meats and meat products, the bodies of dead animals or parts thereof or excrements therefrom, by means of burying or burning or cooking or otherwise processing, whether for the purpose of producing or manufacturing by-products or otherwise. Such a term shall also include all substations of any such plant that are used in connection with such business solely for the temporary disposal or storage of such poultry by-products, dead bodies or parts thereof or excrements therefrom pending final delivery thereof to any such disposal plant or rendering plant, and shall also include all vehicles and equipment thereof used in Mississippi for the transportation of such bodies or parts thereof or excrements therefrom, bones, meat scraps, fats, and otherwise inedible meats and meat products to such plant for their disposal therein in the manner herein prescribed.

(b) The term "dead animals" shall mean the carcasses of dead animals, parts thereof or excrements therefrom.

(c) The word "person" shall include individuals, partnerships, corporations, associations and any other legal entities recognized by law.

(d) The term "poultry by-products" shall mean heads, feet, viscera, blood and feathers.

(e) The term "slaughter house offal and wastes" shall mean heads, feet, viscera, blood and any associated material therewith.

(f) The word "commissioner" shall mean the commissioner of agriculture and commerce, or his duly authorized deputies.

HISTORY:
Codes, 1942, § 4575-102; Laws, 1964, ch. 214, § 2; Laws, 1966, ch. 232, § 1, eff from and after passage (approved May 31, 1966).

Cross References —

Duties of commissioner of agriculture and commerce, generally, see § 69-1-13.

OPINIONS OF THE ATTORNEY GENERAL

A plant which obtains chicken litter of live chickens from poultry growers to convert the litter into commercial feed for cattle is not a "disposal plant" nor a "rendering plant" as defined in Section 41-51-5. Therefore, such a plant would not be subject to the provisions of Section 41-51-19 nor to any other provisions of the animal and poultry by-products disposal law of 1964, as set out in Section 41-51-1. 1996 Miss. Op. Att'y Gen. 284.

RESEARCH REFERENCES

ALR.

Animal rendering or bone-boiling plant or business as nuisance. 17 A.L.R.2d 1269.

§ 41-51-7. Persons, matters or vocations not affected by chapter.

Nothing contained in this chapter shall apply to or affect any of the following persons, matters, or vocations, to wit:

(a) Any persons legally engaged in the course of slaughtering, butchering, manufacturing, or selling, in any manner, any animal flesh and products, where such animals are killed for the purpose of being used solely for human consumption, or any persons engaged in transporting and disposing of the dead bodies of any such animals so killed or of any parts or products thereof to any persons solely for such purpose and use.

(b) Any person transporting, disposing of, or selling the hides or skins of animals, or tanning such hides or skins for himself or other persons.

(c) Any bodies of dead game, birds, fish, reptiles, or small animals of any kind, such as dogs, cats and small game.

(d) Slaughter houses and poultry processing plants which are engaged in the processing of animals or poultry for human consumption and which are operating a rendering plant under the supervision of the Mississippi Department of Agriculture and Commerce or the United States Department of Agriculture for the purpose of disposing of the waste and by-products from such plants only.

(e) Any governmental agency, collecting, transporting, or disposing of the bodies of any dead animals in any manner.

(f) Any person slaughtering animals on his own premises for the manufacture of pet foods, provided the products of same are not transported from his own premises until canned or packaged and properly labeled.

No provisions of any other laws or ordinances regulating any of the persons, matters or vocations aforesaid shall be affected or repealed by this chapter.

HISTORY:

Codes, 1942, § 4575-104; Laws, 1964, ch. 214, § 4; Laws, 1966, ch. 232, § 3, eff from and after passage (approved May 31, 1966).

Cross References —

Meat, meat-food and poultry regulation and inspection, see §§ 75-33-1 et seq.

Meat inspection, see §§ 75-35-1 et seq.

§ 41-51-9. Powers and duties of the commissioner.

The commissioner shall promulgate rules and regulations for the orderly administration and enforcement of this chapter, not inconsistent with the provisions thereof, and shall spread same upon the minutes to be kept in his office. The commissioner shall prescribe and supply the necessary and proper forms to be used in carrying out the provisions of this chapter.

The commissioner shall also obtain and keep in his office a minute book which shall be plainly identified as a record of the things had and done in carrying out the administration of this chapter, and for the proper recordation of the rules and regulations promulgated hereunder. Every licensee shall be furnished a copy of such rules and regulations when a license is issued. No amendment to a rule or regulation containing a penalty for the violation thereof shall become effective in less than thirty (30) days from the date of such amendment, and the date of such amendment must be spread upon the minutes of the commission.

HISTORY:

Codes, 1942, § 4575-106; Laws, 1964, ch. 214, § 6, eff from and after passage (approved March 26, 1964).

Cross References —

Regulations of transportation and storage, see § 41-51-11.

Suspension or revocation of license for violation of commissioner's regulations, see § 41-51-25.

Penalty for violation of commissioner's rules and regulations, see § 41-51-31.

Duties of commissioner of agriculture and commerce, generally, see § 69-1-13.

§ 41-51-11. Regulation of transportation and storage.

All poultry and meats and their component parts or products having physical characteristics of an edible product or capable of being used for or diverted to human food, and all poultry and meats and their products which have become unsound, unwholesome, or any other way unfit for human food including any rendered or unrendered grease, tallow or other fats, or the carcass or parts of carcass of any other animal or poultry which is unfit for human consumption shall not be transported or stored within the State of Mississippi until and unless the same shall have been decharacterized, denatured or otherwise destroyed for human food purposes. The commissioner shall promulgate rules and regulations necessary for the safe and proper handling of these poultry and animal parts or products in the interest of public health. The commissioner shall exercise the police powers of the state in the search, seizure, confiscation and destruction in the investigation and prosecution of violations of this section.

HISTORY:

Codes, 1942, § 4575-103; Laws, 1964, ch. 214, § 3; Laws, 1966, ch. 232, § 2, eff from and after passage (approved May 31, 1966).

§ 41-51-13. Application for license to operate plant; fees.

It shall be the duty of every person operating a disposal plant or rendering plant to apply to the commissioner for a license to operate such establishment, and no person shall engage in this state in the business of operating such a disposal plant or rendering plant without first having obtained for each such disposal plant so operated by him, or in his behalf, a license pursuant to this chapter.

Said commissioner shall keep a record of all applications for licenses, showing all issued, denied or revoked by him and such other facts as he may prescribe. The application for a license shall be made on a form to be supplied by the commissioner, and shall show the location of each establishment and the name and address of the owner and the name and address of the lessor or lessee. Such application shall also set forth the particular method or methods which the applicant intends to employ, or is employing, in the transportation and in the disposal or processing of poultry by-products or the bodies of such dead animals; the number and location of all substations he desires to operate, if any; the number and kind of vehicles he will use; and such other essential information thereto as the commissioner, by his rules and regulations, may require.

The application shall have attached thereto the affidavit of the person applying for the licensing that the facts set forth therein are true and correct.

Such application shall be accompanied by an initial fee of Fifty Dollars ($50.00) for each disposal plant or rendering plant, Five Dollars ($5.00) for each substation operated in conjunction therewith, and Five Dollars ($5.00) for each vehicle unit used in transportation of the poultry by-products, bodies of dead animals and products of said rendering operation. Like fees shall be paid to the commissioner annually for each renewal thereof. All fees collected under the provisions of this chapter shall be deposited in the general fund in the state treasury.

HISTORY:
Codes, 1942, § 4575-105; Laws, 1964, ch. 214, § 5; Laws, 1970, ch. 255, § 7, eff from and after July 1, 1970.

RESEARCH REFERENCES

Am. Jur.
51 Am. Jur. 2d, Licenses and Permits §§ 42 et seq.

CJS.
53 C.J.S., Licenses §§ 106–114 et seq.

§ 41-51-15. Inspection of plant; issuance and term of licenses.

Upon receipt of such application, the commissioner, or some person appointed and designated by him, shall, within thirty (30) days, inspect the plant, and the locality where such applicant is conducting or proposes to conduct such business, and shall ascertain whether such applicant is a responsible and suitable person, financially and otherwise, to be entrusted with a license to conduct such business and that such applicant has fulfilled and complied with the requirements of all the sections of this chapter and of the rules and regulations authorized in this chapter relating to such business.

If such commissioner shall find that such applicant is such a responsible and suitable person to conduct such business, and that the plant of such applicant, and the methods of operation thereof comply with all the provisions of this chapter and with the rules and regulations authorized in this chapter, and that such business is located in a place permitted by this chapter, he shall thereupon issue to such applicant a certificate to that effect.

All licenses and certificates issued under this chapter shall remain effective until and unless voluntarily surrendered, or suspended or revoked, as provided in this chapter, conditioned, however, upon payment to the commissioner on or before July 15th subsequent to the year of issuance, of the required total annual license fee, which payment shall operate, without further application, to continue such licenses and certificates in full effect during each year for which such license fee shall be paid, unless sooner surrendered or suspended or revoked.

HISTORY:

Codes, 1942, § 4575-105; Laws, 1964, ch. 214, § 5; Laws, 1970, ch. 255, § 7, eff from and after passage (approved July 1, 1970).

Cross References —

License fees, see § 41-51-13.

Annual inspection of plants, see § 41-51-23.

Request for recorded hearing on decisions and orders of commissioner, see § 41-51-27.

Appeal from decisions and orders of commissioner, see § 41-51-29.

RESEARCH REFERENCES

Am. Jur.

51 Am. Jur. 2d, Licenses and Permits §§ 42 et seq.

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 26, 33 (petition or application – for mandmaus – to compel issuance of license).

CJS.

53 C.J.S., Licenses §§ 106–114 et seq.

§ 41-51-17. Additional inspections of non-complying applicants; fees therefor.

Whenever the commissioner, by his first inspection of the applicant's plant, shall find that the applicant has not complied with all the requirements of this chapter and of such rules and regulations, he shall at once notify the applicant in writing, delivered in person or by registered mail, with return receipt, specifying the particulars of such failure to comply therewith and of any further objections he may have. Upon being notified in like manner by the applicant in writing of such compliance and that such plant conforms to the requirements of this chapter and of such rules and regulations, the commissioner shall, within ten (10) days, make a similar second inspection thereof. The commissioner shall not be required to make more than two (2) of the aforesaid initial inspections of the same plant, substation and vehicles under one (1) application and the original payment of fees unless he so desires. If one (1) or two (2) inspections additional to the second inspection are desired by the applicant in effecting a compliance by him with the requirements of this chapter, such applicant shall request the same in writing and pay in advance additional inspection fees of Twenty-five Dollars ($25.00) for each such inspection so requested by him; for any further such inspections, he shall pay a fee of One Hundred Dollars ($100.00) each.

In the event such applicant shall be refused a license and such refusal be finally sustained upon any appeal, no part of the fees paid by him shall be refunded, but all such fees shall belong to the State of Mississippi, as a part of its general fund.

HISTORY:

Codes, 1942, § 4575-107; Laws, 1964, ch. 214, § 7, eff from and after passage (approved March 26, 1964).

Cross References —

Annual inspection of plants, see § 41-51-23.

Request for recorded hearing on decisions and orders of commissioner, see § 41-51-27.

Appeal from decisions and orders of commissioner, see § 41-51-29.

§ 41-51-19. Location of plants.

No new plant shall be located or constructed, or any discontinued plant reconstructed or reopened, at any place in this state inside of, or within two (2) miles of the nearest point of, the existing corporate limits of any municipality with a population in excess of five hundred (500) according to the latest federal census, or within one (1) mile of the nearest boundary of the lands owned or controlled in connection either with any state, county, township, city or town park, or boulevard, or of any public school or hospital, or of any charitable, religious or educational institution.

Any existing plant which shall, on March 26, 1964, be in operation upon a site located in, or within the distance aforesaid from, any of the places or objects designated in this section shall not be denied a license solely by reason of its location.

HISTORY:

Codes, 1942, § 4575-108; Laws, 1964, ch. 214, § 8; Laws, 1968, ch. 238, § 1, eff from and after passage (approved March 28, 1968).

OPINIONS OF THE ATTORNEY GENERAL

A plant which obtains chicken litter of live chickens from poultry growers to convert the litter into commercial feed for cattle is not a "disposal plant" nor a "rendering plant" as defined in Section 41-51-5. Therefore, such a plant would not be subject to the provisions of Section 41-51-19 nor to any other provisions of the animal and poultry by-products disposal law of 1964, as set out in Section 41-51-1. 1996 Miss. Op. Att'y Gen. 284.

§ 41-51-21. When plant may be deemed suitable or sanitary.

No disposal plant or rendering plant shall be deemed a suitable or sanitary place for disposing of poultry by-products or the bodies of dead animals by any process of cooking or burning, unless it conforms to the following minimum specifications:

(a) The building must have four (4) walls complete and be provided with concrete or cement floors and with good drainage and be thoroughly sanitary in construction and maintenance. Any sewage, drainage, or waste water of any kind, if of an offensive or obnoxious character or odor, detrimental to human, animal, agricultural or aquatic life, shall not be permitted to escape therefrom until first treated as herein specified. All sewage and plant wastes shall be disposed of according to recognized and accepted sanitary engineering methods which will not create a public health hazard or unsanitary situation so as to be a nuisance.

(b) All such plants must be properly equipped and operated with steel tanks, enclosed dryers and cold water condensers. All tanks shall be airtight except proper escapes for live steam, passing through the tanks during cooking, which steam shall be condensed by use of cold water condensers. All such equipment and any other equipment which may be invented, manufactured and installed for use in disposal or rendering plants shall be so constructed and maintained as to prevent any avoidable escape of odors into the air.

(c) All skinning and dismembering of bodies shall be done within such building and in such manner and shall be so kept therein that no unnecessary annoyance shall be caused other persons by the conditions or unsightly appearance of such bodies or any parts and contents thereof, and all such bodies and all parts and contents thereof shall be disposed of within twenty-four (24) hours after delivery to such plant, by some method herein specified, except where rendered impossible by accident or other casualty preventing the operation of the plant, or except where some epidemic or act of God has caused more bodies to be accumulated than can be reasonably disposed of within such period of time by the continuous operation of the plant. In such events the plant shall be placed in operation as soon as possible and shall be operated continuously until all bodies are disposed of.

(d) Such disposal plant shall be so situated, constructed and maintained and all operations therein so conducted at all times as not to create and continue unnecessarily a public nuisance.

HISTORY:

Codes, 1942, § 4575-109; Laws, 1964, ch. 214, § 9, eff from and after passage (approved March 26, 1964).

Cross References —

Suspension or revocation of license for unsanitary conditions, see § 41-51-25.

Nuisances, generally, see §§ 95-3-1 et seq.

RESEARCH REFERENCES

ALR.

Animal rendering or bone-boiling plant or business as nuisance. 17 A.L.R.2d 1269.

Am. Jur.

58 Am. Jur. 2d, Nuisances § 70.

8 Am. Jur. Proof of Facts, Nuisances, Proof No. 1 (suit to enjoin nuisance affecting residence).

6 Am. Jur. Proof of Facts 3d, Act of God, §§ 1 et seq.

§ 41-51-23. Annual inspection of plant.

The commissioner, in person or by anyone authorized by him, shall inspect each plant and place licensed under this chapter, at least once each year, and as often as he may deem necessary, and shall see that the licensees and all other persons comply with this chapter and conduct such business in conformity to this chapter and to the rules and regulations made and published by him pursuant thereto.

HISTORY:
Codes, 1942, § 4575-110; Laws, 1964, ch. 214, § 10, eff from and after passage (approved March 26, 1964).

§ 41-51-25. Proceedings to suspend or revoke license.

The commissioner shall have power to suspend for any fixed period, or to revoke, the license held by any licensee under this chapter in the event that such licensee shall violate and fail or refuse to obey any of the provisions of this chapter, or of the rules and regulations promulgated by the commissioner, or in the event the state board of health shall certify in writing to the commissioner that any particular disposal plant or rendering plant is a menace to the public health, stating the charges specifically and definitely, in which case the hearing hereinafter provided for shall be held within thirty (30) days after such charges of said board are so filed.

Before any license shall be suspended or revoked, the licensee shall be furnished with a written copy of the charges made against him and a hearing shall be had before the commissioner, or his authorized representative, at such time and place as he may fix, upon at least ten (10) days' notice in writing to the licensee, to determine whether such license shall be suspended or revoked. Such notice may be served either by registered mail, with return receipt, addressed to such licensee at the address shown in his application, or in the manner provided by law for the service of a summons. At the time and place fixed for the hearing, the licensee may appear in person and by counsel and such charges shall be deemed denied, without any answer thereto. The licensee may, however, file an answer if he so desires. Any other person whose interest would be adversely affected either by the suspension or revocation of such license or by its continuing in effect may intervene and offer evidence at such hearings. The hearing shall be conducted in a summary manner, under such procedure as the rules and regulations may prescribe, and the commissioner, or his representative, shall receive and hear all the evidence and arguments offered by both parties and shall afford the licensee full opportunity to present all defenses available to him. When a hearing under this section is conducted before a representative of the commissioner, a written report and summary of the evidence at such hearing shall be made by him to the commissioner, with recommendation for action thereon. The commissioner, after such hearing before him, or after considering such report and summary of the evidence by his representative, shall render such decision and make such order as he may deem just, either dismissing the proceedings, or suspending the license for any fixed period, or revoking the license. Such order shall be entered on his records and written notice thereof shall be forthwith mailed by registered mail, with return receipt, to or served personally upon such licensee.

HISTORY:
Codes, 1942, § 4575-111; Laws, 1964, ch. 214, § 11, eff from and after passage (approved March 26, 1964).

Cross References —
State Board of Health, see §§ 41-3 et seq.

Request for recorded hearing on decisions and orders of commissioner, see § 41-51-27.

Appeal from decisions and orders of commissioner, see § 41-51-29.

RESEARCH REFERENCES

Am. Jur.

2 Am. Jur. 2d, Administrative Law §§ 298 et seq.

51 Am. Jur. 2d, Licenses and Permits §§ 56 et seq.

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 41-49 (proceedings relating to suspension or revocation of license).

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 61-63 (proceedings for reinstatement of license).

CJS.

53 C.J.S., Licenses §§ 125–129, 133, 138, 140, 136, 141–148.

§ 41-51-27. Recorded hearing.

Any licensee or other interested person, aggrieved by a decision or order of the commissioner made under the provisions of this chapter but entered without a recorded hearing, may make written request to the commissioner for a recorded hearing thereon. The commissioner shall hear such party or parties within thirty (30) days after receipt of such request and shall give not less than fifteen (15) days' written notice of the time and place of the hearing. Within thirty (30) days after such hearing the commissioner shall affirm, reverse or modify his previous action, specifying his reason therefor. Pending such hearing, and decision thereon, the commissioner shall suspend or postpone the effective date of his previous order.

The proceedings, evidence and decision or order of the commissioner in any hearing requested pursuant to the preceding paragraph shall be recorded, and any hearing ordered by the commissioner under the provisions of this chapter may, at his direction or upon the request of a party thereto, be so recorded. Nothing herein shall require the observance at any hearing of formal rules of pleading or evidence.

HISTORY:

Codes, 1942, § 4575-112; Laws, 1964, ch. 214, § 12, eff from and after passage (approved March 26, 1964).

§ 41-51-29. Appeals.

Any licensee or other person, aggrieved by any final decision or order of the commissioner made or entered in or on such decision or order may appeal to the circuit court of the First Judicial District of Hinds County, by filing with the commissioner a petition for review within thirty (30) days from the date of such decision or order, specifying the grounds upon which he relies, and by filing with the clerk of said court a bond with such surety or sureties and in such penalty as shall be approved by the commissioner or the clerk or judge of said court, conditioned that such appellant will pay all costs of the appeal in event such appeal is unsuccessful. The state may appeal from such decision or order in like time and manner without giving bond. Such appeal, and appeal bond, shall not operate as a supersedeas, but the commissioner, or the judge of said circuit court (or any judge of the supreme court in event of appeals thereto) may grant a supersedeas upon such terms and conditions and upon such bond as may be deemed proper. All appeal and supersedeas bonds shall be payable to the state and may from time to time and upon cause shown be ordered increased or ordered replaced by other bonds with approved sureties, and may be enforced in the manner provided by law for the enforcement of other similar bonds. In perfecting such an appeal, the provisions of law respecting notice to the reporter and the allowance of bills of exception, now or hereafter in force respecting appeals from circuit courts to the supreme court, shall be applicable. The cause shall be triable as a preference cause either in term time or vacation, and at such time and place as may be fixed by the circuit judge. The appeal shall be upon the record, which shall contain the petition for review and the proceedings, evidence, and decision or order appealed from, and the same shall be signed by the commissioner or the person acting as his representative and by him transmitted forthwith to said circuit court. Such court shall hear and determine the case presented by such record, and may affirm or set aside the decision or order from which the appeal was taken and shall thereupon certify its judgment to the commissioner. In case the decision or order of the commissioner be set aside by the circuit court, such court shall enter and render such judgment, decision or order as the commissioner should have rendered, unless it be necessary, in consequence of its decision, that some decision or ruling entirely administrative or legislative in nature be made, or that some fact or question of fact not appearing in or not settled by the record be ascertained or determined, in which cases the matter shall be remanded to the commissioner for further proceedings and action or decision in accord with the judgment and direction of such circuit court from which further proceedings, action, or decision of the commissioner further appeals may be taken to the circuit court in the manner provided in this section. Costs on an appeal shall be awarded as in other cases. Any party, including the state and the commissioner, aggrieved by a final decision of said circuit court, may appeal to the supreme court in the manner provided by law.

HISTORY:

Codes, 1942, § 4575-112; Laws, 1964, ch. 214, § 12, eff from and after passage (approved March 26, 1964).

Cross References —

Jurisdiction of circuit court, see § 9-7-81.

RESEARCH REFERENCES

Am. Jur.

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 23 et seq (judicial review of refusal of license).

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 43, 46, 48 (proceedings for review of revocation of license).

§ 41-51-31. Penalties.

Violation of any of the provisions of this chapter, or the rules and regulations made in pursuance thereof, is hereby made a misdemeanor, and any person, upon conviction thereof, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00).

HISTORY:
Codes, 1942, § 4575-113; Laws, 1964, ch. 224, § 13, eff from and after passage (approved March 26, 1964).

Cross References —
Rules and regulations of commissioner, see § 41-51-9.

Criminal offense for sale of flesh of dead, diseased or unclean animals as food, see § 97-27-19.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

CJS.
3A C.J.S., Animals §§ 174-177.

§ 41-51-33. Injunctive relief.

The Attorney General of the State of Mississippi may bring an action in the name of the people of the State of Mississippi to enjoin the continued operation of any disposal or rendering plant found to be operating within this state for which no license has been obtained under this chapter or for which such license has been suspended or revoked.

HISTORY:
Codes, 1942, § 4575-114; Laws, 1964, ch. 214, § 14, eff from and after passage (approved March 26, 1964).

Cross References —
Attorney general, see §§ 7-5-1 et seq.
Injunctions, generally, see §§ 11-13-1 et seq.

CHAPTER 53.

RABIES CONTROL IN DOGS AND CATS

Sec.
41-53-1. Rabies inoculation of dogs and cats required.
41-53-3. Repealed.
41-53-5. Who may administer virus.
41-53-7. Tags.
41-53-9. Certificate of inoculation; records.
41-53-11. Dogs running at large.
41-53-13. Penalties.

§ 41-53-1. Rabies inoculation of dogs and cats required.

Every person in the State of Mississippi who owns, or has in his or her possession, any dog or cat of the age of three (3) months or over shall have said dog or cat inoculated (vaccinated) against rabies as provided herein with the recommended dosage of an anti-rabic virus (vaccine) approved by the State Board of Health, and it shall be unlawful for any person within the State of Mississippi to own or have in his or her possession within the State of Mississippi any dog or cat three (3) months of age or over which has not been inoculated (vaccinated) against rabies with the approved dosage of an approved anti-rabic virus (vaccine). It shall be the duty of every person in this state so owning or having in his or her possession a dog or cat to have said dog or cat inoculated (vaccinated) immediately after said dog or cat has reached the age of three (3) months, and it shall be said person's further duty to have said dog or cat so inoculated (vaccinated) thereafter as required by the State Board of Health. For a failure to comply with this section said person shall be subject to the penalties provided in Section 41-53-13.

HISTORY:

Codes, 1942, § 6815; Laws, 1938, ch. 357, § 1; Laws, 1950, ch. 459, § 1; Laws, 1983, ch. 522, § 29, eff from and after July 1, 1983.

Cross References —

State board of health generally, see §§ 41-3 et seq.

RESEARCH REFERENCES

ALR.

Keeping of dogs as enjoinable nuisance. 11 A.L.R.3d 1399.

Liability for injuries caused by cat. 68 A.L.R.4th 823.

Am. Jur.

1B Am. Jur. Pl & Pr Forms (Rev), Animals, Forms 134, 135 (complaint, petition, or declaration – knowledge of dog's vicious propensities – rabies disease in county-injury to infant).

15 Am. Jur. Proof of Facts, Rabies Management and Treatment § 31 (proof of death from rabies).

§ 41-53-3. Repealed.

Repealed by Laws, 1983, ch. 522, § 50, eff from and after July 1, 1983. [Codes, 1942, § 6816; Laws, 1938, ch. 357, § 2; Laws, 1950, ch. 459, § 2]

Editor's Notes —

Former § 41-53-3 pertained to the administering of vaccine in accordance with this chapter, and with the procurement and storage thereof.

§ 41-53-5. Who may administer virus.

All inoculations (vaccinations) done in accordance with this chapter must be done by either a licensed veterinarian or other competent person granted a permit to administer virus (vaccine) by the state board of health.

HISTORY:

Codes, 1942, § 6817; Laws, 1938, ch. 357, § 3; Laws, 1983, ch. 522, § 30, eff from and after July 1, 1983.

§ 41-53-7. Tags.

It shall be the duty of the manufacturer or manufacturers contracted with to furnish virus (vaccine) to furnish with each ampoule (dose) of virus (vaccine), a suitable metal tag approved by the state board of health, which may be securely bradded to the collar of the dog inoculated (vaccinated). Said tag shall have stamped thereon the serial number of vaccination and the year in which said dog was inoculated. This tag shall be furnished to the owner when said dog is inoculated (vaccinated), and it shall be his duty to securely attach same to the collar, and each dog owned by or in the possession of any person within the State of Mississippi shall wear at all times a collar or other device which shall have securely bradded on to it the metal tag provided for above. Any such tag shall not be transferable to any dog other than the dog for which it was issued.

HISTORY:

Codes, 1942, § 6818; Laws, 1938, ch. 357, § 4.

§ 41-53-9. Certificate of inoculation; records.

All persons administering virus (vaccine) in accordance with this chapter shall furnish the owner of each dog or cat inoculated (vaccinated) a certificate of inoculation (vaccination) for each dog or cat inoculated (vaccinated) indicating the breed of each dog or cat inoculated (vaccinated), the sex of each dog or cat inoculated (vaccinated), and the markings and the serial number of the tag attached to the collar or some other device on each dog. Persons administering virus (vaccine) in accordance with this chapter shall maintain records of each inoculation, indicating the owner of each dog or cat inoculated (vaccinated), the breed of each dog or cat inoculated (vaccinated), the sex of each dog or cat inoculated (vaccinated), and the markings and serial number of the tag furnished to the owner of each dog.

HISTORY:

Codes, 1942, § 6820; Laws, 1938, ch. 357, § 6; Laws, 1983, ch. 522, § 31, eff from and after July 1, 1983.

RESEARCH REFERENCES

Am. Jur.
61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers § 112.

§ 41-53-11. Dogs running at large.

(1) It shall be lawful and it shall be their duty for any sheriff, conservation officer or peace officer of a county or municipality to kill any dog above the age of three (3) months found running at large on whose neck there is no such collar and tag. No action shall be maintained by the owner for such killing. However, it shall be the duty of said officer who finds a dog or dogs running at large to first keep said dog or dogs for a period of five (5) days and notify the sheriff of said county that he has said dog or dogs, giving the sheriff a description of same. If anyone proves himself to be the owner of same, he shall pay said officer the sum of fifty cents (50¢) before the dog is delivered to the owner.

(2) It shall be the duty of any sheriff, conservation officer or peace officer of a county or municipality to kill or otherwise destroy any and all dogs above the age of three (3) months which are running at large and have not been inoculated (vaccinated) as required in this chapter.

HISTORY:
Codes, 1942, §§ 6819, 6821; Laws, 1938, ch. 357, § 5; Laws, 1974, ch. 569, § 5; Laws, 1983, ch. 522, § 32, eff from and after July 1, 1983.

Cross References —
Authority of counties to control and impound dogs running at large, see § 19-5-50.

Authority of municipalities to control animals running at large and to establish city pounds, see § 21-19-9.

Estrays, generally, see §§ 69-13-301 et seq.

OPINIONS OF THE ATTORNEY GENERAL

An officer must keep all dogs described in Section 41-53-11 for five days and notify the sheriff before killing the dogs. If a dog was obviously rabid and a clear and present danger to the public safety, the five day waiting period would not apply. 1996 Miss. Op. Att'y Gen. 239.

Section 41-53-11(2) does not contain the liability protection that is found in subsection (1). Therefore, an officer that destroys a dog under subsection (2), without waiting the five day period, may subject himself to liability for such action. 1996 Miss. Op. Att'y Gen. 239.

Section 19-3-40 allows a county to contract with a humane society to maintain an animal shelter. Any contract providing for these services would be in addition to, and would not supplant, the sheriff's duties as provided in this section. 2004 Miss. Op. Att'y Gen. 701.

A sheriff could appoint the county animal control officer to be a deputy for the purpose of handling any situation regarding a rabid or vicious animal. However, that if such officer is declared a deputy sheriff, she would be an agent of the sheriff and the sheriff would be responsible for her actions. 2004 Miss. Op. Att'y Gen. 290.

RESEARCH REFERENCES

ALR.
Civil liability of landowner for killing or injuring trespassing dog. 15 A.L.R.2d 578.

Dog owner's liability for damages from motor vehicle accident involving attempt to avoid collision with dog on highway. 41 A.L.R.3d 888.

Construction and application of ordinances relating to unrestrained dogs, cats, or other domesticated animals. 1 A.L.R.4th 994.

Liability of owner of dog for dog's biting veterinarian or veterinarian's employee. 4 A.L.R.4th 349.

Validity and construction of statute, ordinance, or regulation applying to specific dog breeds, such as "pit bulls" or "bull terriers". 80 A.L.R.4th 70.

Am. Jur.

1B Am. Jur. Pl & Pr Forms (Rev), Animals, Forms 21-26 (proceedings for destruction of diseased animals).

1 Am. Jur. Proof of Facts, Animals, Proof No. 5 (justifiable destruction of animal).

CJS.

3B C.J.S., Animals §§ 122, 125, 292.

§ 41-53-13. Penalties.

The failure or refusal of any person to comply with any of the provisions of this chapter shall constitute a misdemeanor, and the offender shall, on conviction thereof, be fined for the first offense in a sum not to exceed Five Dollars ($5.00) and for the second offense in a sum not to exceed Twenty-five Dollars ($25.00) and for the third offense a sum not to exceed Fifty Dollars ($50.00), together with all costs. It shall be the duty of the sheriffs, conservation officers and all peace officers of the counties and municipalities of Mississippi to enforce this chapter. It shall be the duty of the county attorneys and district attorneys of this state to prosecute all violators of this chapter.

HISTORY:

Codes, 1942, § 6821; Laws, 1938, ch. 357, § 7; Laws, 1974, ch. 569, § 6, eff from and after passage (approved April 24, 1974).

Cross References —

Authority of municipalities to control animals running at large and to establish city pounds, see § 21-19-9.

Requirement that dogs and cats be inoculated against rabies, see § 41-53-1.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

OPINIONS OF THE ATTORNEY GENERAL

Any animal control officer who is a peace officer or a deputy sheriff has the authority and duty to enforce the provisions of Title 41, Chapter 53 of the Mississippi Code; such chapter may be enforced by county tickets or affidavits filed in the proper court. 2001 Miss. Op. Att'y Gen. 680.

RESEARCH REFERENCES

ALR.

Landlord's liability to third person for injury resulting from attack by dangerous or vicious animal kept by tenant. 81 A.L.R.3d 638.

CHAPTER 55.

PUBLIC AMBULANCE SERVICE

Public Ambulance Services by Governmental Entities. 41-55-1
Air Ambulance Service Districts. 41-55-31

PUBLIC AMBULANCE SERVICES BY GOVERNMENTAL ENTITIES

Sec.
41-55-1. Maintenance and operation of public ambulance service by political entities.
41-55-2. Defrayal of cost of public ambulance service.
41-55-3. Joint service by counties and municipalities; contracts, apportionment of ownership of property and costs of operation.
41-55-5. Casualty and liability insurance in connection with ambulance service; partial waiver of immunity.
41-55-7. Effect of existence of adequate private ambulance service; public subsidies.
41-55-9. Maintenance and operation of ambulance service by certain hospitals.
41-55-11. Repealed.

§ 41-55-1. Maintenance and operation of public ambulance service by political entities.

The board of supervisors of any county and the governing authorities of any city, town, or any political subdivision thereof, either separately or acting in conjunction, in their discretion and upon finding that adequate public ambulance service would not otherwise be available, may own, maintain, and operate a public ambulance service as a governmental function, fix and collect charges therefor, and adopt, promulgate and enforce reasonable rules and regulations for the operation of said service. Any political subdivision, or parts thereof, acting hereunder may contract and otherwise cooperate with any department or agency of the United States Government or the State of Mississippi, or any county, city, town, or supervisors district of the same, or other counties of the State of Mississippi in carrying out any of the powers herein conferred or otherwise effectuating the purposes of Sections 41-55-1 through 41-55-11 and in so doing accept gifts, money, and other property of whatever kind.

HISTORY:

Codes, 1942, § 2997-21; Laws, 1968, ch. 290, § 1, eff from and after passage (approved July 19, 1968).

Editor's Notes —

Section 41-55-11 referred to in this section was repealed by its own terms by Laws of 1992, ch. 491, § 26, eff from and after October 1, 1993.

Cross References —

Effect of existence of adequate private ambulance service on contracts for public ambulance service, see § 41-55-7.

Operation and maintenance of ambulance service by public hospitals, see § 41-55-9.

Air ambulance service districts, see §§ 41-55-31 et seq.

Emergency medical services law, see §§ 41-59-1 et seq.

Advanced life support personnel and services, see §§ 41-60-11 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Statute authorizes city to charge user fee to individuals who actually use ambulance service but does not authorize city to charge availability fee; general fee charged to all homeowners and businesses regardless of whether or not they use service would in actuality be tax for support of ambulance service. 1990 Miss. Op. Att'y Gen. 729.

County may contract with Regional Medical Center for ambulance service. 1992 Miss. Op. Att'y Gen. 648.

It is within the power of a city to enter into a contract with a local hospital to provide ambulance services and to set a reasonable rate for those services. 1999 Miss. Op. Att'y Gen. 626.

§ 41-55-2. Defrayal of cost of public ambulance service.

The board of supervisors of counties having a population of not more than twenty-two thousand (22,000) nor less than fifteen thousand (15,000) as shown by the 1970 federal census and having an assessed valuation in excess of Twenty Million Dollars ($20,000,000.00) in 1970 and being traversed by Interstate Highway No. 55, may, in the discretion of the board, set aside, appropriate and expend moneys from the general fund to be used solely for defraying the cost of providing public ambulance service as authorized by Sections 41-55-1 through 41-55-11.

HISTORY:

Codes, 1942, § 2997-21; Laws, 1972, ch. 462, §§ 1, 2; Laws, 1986, ch. 400, § 25, eff from and after October 1, 1986.

Editor's Notes —

Section 41-55-11 referred to in this section was repealed by its own terms by Laws of 1991, ch. 491, § 26, eff from and after October 1, 1993.

§ 41-55-3. Joint service by counties and municipalities; contracts, apportionment of ownership of property and costs of operation.

In acting jointly the board of supervisors of any such county acting for the county or supervisors district of the county, and the governing authorities of any city or town, acting for the city or town, are hereby authorized and empowered to contract with each other, for and on behalf of the political subdivisions or parts thereof which each represents, with respect to any and all things related to the matters and things authorized in Sections 41-55-1 through 41-55-11, and particularly to apportion and prorate the ownership of the property acquired or to be acquired in such a joint undertaking, and to determine the proportionate part of the cost of maintenance, support and operation to be assumed by each.

HISTORY:

Codes, 1942, § 2997-22; Laws, 1968, ch. 290, § 2, eff from and after passage (approved July 19, 1968).

Editor's Notes —

Section 41-55-11 referred to in this section was repealed by its own terms by Laws of 1992, ch. 491, § 26, eff from and after October 1, 1993.

Cross References —

Emergency medical services law, see §§ 41-59-1 et seq.

§ 41-55-5. Casualty and liability insurance in connection with ambulance service; partial waiver of immunity.

The governing authority of or for any such political subdivision or part thereof shall have further power and authority to obtain insurance against casualty to the property used or useful in such public ambulance service.

HISTORY:

Codes, 1942, § 2997-23; Laws, 1968, ch. 290, § 3; Laws, 1984, ch. 495, § 18; reenacted and amended, Laws 1985, ch. 474, § 26; Laws, 1986, ch. 438, § 27; Laws, 1987, ch. 483, § 28; Laws, 1988, ch. 442, § 25; Laws, 1989, ch. 537, § 24; Laws, 1990, ch. 518, § 25; Laws, 1991, ch. 618, § 24; Laws, 1992, ch. 491 § 25, eff from and after passage (approved May 12, 1992).

Cross References —

Participation in a comprehensive plan of one or more policies of liability insurance procured and administered by the Department of Finance and Administration, see § 11-46-17.

Emergency medical services law, see §§ 41-59-1 et seq.

RESEARCH REFERENCES

ALR.

Liability of operator of ambulance service for personal injuries to person being transported. 68 A.L.R.4th 14.

§ 41-55-7. Effect of existence of adequate private ambulance service; public subsidies.

If there is in operation an adequate privately run ambulance service, then the governing authorities are hereby prohibited from contracting for ambulance services to be run by the public body. The governing authorities may, however, subsidize such existing privately run ambulance service, in their discretion, if they deem necessary to keep such service in operation.

HISTORY:

Codes, 1942, § 2997-25; Laws, 1968, ch. 290, § 5, eff from and after passage (approved July 19, 1968).

Cross References —

Emergency medical services law, see §§ 41-59-1 et seq.

JUDICIAL DECISIONS

1. In general.

County board of supervisors did not violate the preference for contracting with private ambulance services under Miss. Code Ann. § 41-55-7 when it entered into a contract with a public company after a private ambulance service informed the board it was terminating its services to the county. Stone County v. Stone County Hosp. Ambulance Serv., 64 So. 3d 507, 2010 Miss. App. LEXIS 656 (Miss. Ct. App. 2010), cert. denied, 63 So. 3d 1229, 2011 Miss. LEXIS 328 (Miss. 2011).

Miss. Code Ann. § 41-55-7 did not prohibit the county board of supervisors from awarding an ambulance contract to another private entity just because there was an existing adequate privately run ambulance service that had previously been awarded the contract. Malone v. Leake County Bd. of Supervisors, 841 So. 2d 141, 2003 Miss. LEXIS 136 (Miss. 2003).

A county board of supervisors' decision to award a contract for ambulance service to a public agency evaded § 41-55-7, even though the board found that a need existed for the ambulance service "which would not otherwise be available," where there was no finding that an adequate privately run ambulance service was unavailable. Cook v. Board of Supervisors, 571 So. 2d 932, 1990 Miss. LEXIS 693 (Miss. 1990).

Section 41-55-7 does not speak to the relative rights or standing of private ambulance services among themselves, nor does it afford criteria for preferring one over another. Rather, the statute addresses only the relative standing of private entrepreneurs as a whole vis-a-vis public providers and mandates private preference where at least one such private entity may provide probable proof that its ambulance service is and will be adequate. The statute regards the matter of contract price essentially irrelevant. Cook v. Board of Supervisors, 571 So. 2d 932, 1990 Miss. LEXIS 693 (Miss. 1990).

OPINIONS OF THE ATTORNEY GENERAL

A county may contract with a privately run out-of-county ambulance service if the board of supervisors finds, consistent with fact, that such ambulance service is adequate and if the subsidy is necessary to keep such services in operation. 1992 Miss. Op. Att'y Gen. 370.

Section 41-55-7 authorizes a municipality to appropriate a specific sum which is included in the municipal budget to a privately run ambulance service, the statute does not authorize a municipality to execute a continuing guaranty to a governmental entity or other lender to secure funds loaned to a privately run ambulance service. 1995 Miss. Op. Att'y Gen. 311.

§ 41-55-9. Maintenance and operation of ambulance service by certain hospitals.

In addition to other authority specifically conferred on it or arising by necessary implication, the board of commissioners or board of trustees of any hospital owned separately or jointly by one or more of such counties, cities, towns, or supervisors districts of the same or other such counties as defined in Section 41-55-1 may, in its discretion and upon a finding that adequate ambulance service would not otherwise be available, own, operate, and maintain a public ambulance service as an integral part of its governmental function of operating and maintaining a hospital and, in so doing, shall possess and may exercise and enjoy the same authority, powers, rights, privileges and immunities with respect to the operation and maintenance of said service as it possesses and may exercise and enjoy with respect to the operation and maintenance of other departments of the hospital, including the right to fix and collect charges for such ambulance service, and to adopt, promulgate and enforce reasonable rules and regulations for the operation of said service.

In addition to the foregoing, the board of commissioners or board of trustees of any such public hospital may, in its discretion and upon a finding that adequate public ambulance service would not otherwise be available, either contract with the governing authority or authorities of one or more other such public hospitals, with the governing authority or authorities of one or more private nonprofit hospitals, or with the governing authorities of a combination of both types of hospitals as aforesaid, for the joint ownership, operation and maintenance of a public ambulance service. Moreover, the board of commissioners or board of trustees of any such public hospital, upon a further finding that it is necessary or expedient to do so, may, individually or jointly with the governing authority or authorities of either or both types of hospitals as aforesaid, organize and participate in the ownership of a nonprofit corporation organized under the laws of the State of Mississippi for the specific purpose of providing public ambulance service. Any such contract and any such charter of incorporation shall include specific provisions for retaining majority control in the public hospital or hospitals involved, to preserve and protect the funds and property of the public hospital or hospitals involved and to provide for termination of the arrangement upon reasonable notice by the public hospital or hospitals.

HISTORY:

Codes, 1942, § 2997-24; Laws, 1968, ch. 290, § 4, eff from and after passage (approved July 19, 1968).

Cross References —

Effect of existence of adequate private ambulance service on contracts for public ambulance service, see § 41-55-7.

OPINIONS OF THE ATTORNEY GENERAL

Board of trustees of community hospital may increase its fees for public ambulance service which is part of hospital and is not required to obtain approval or consent of governing authorities of municipality in county which hospital serves. 1992 Miss. Op. Att'y Gen. 658.

Board of trustees of community hospital has authority to maintain ambulance service as a part of community hospital and to fix rates for this service; municipal ordinance which provides that rates for ambulance services of community hospital set by board of trustees must be approved by governing authorities of city is inconsistent with statute. 1992 Miss. Op. Att'y Gen. 789.

§ 41-55-11. Repealed.

Repealed by its own terms by Laws, 1992, ch. 491, § 26, eff from and after October 1, 1993.

[Codes, 1942, § 2997-26; Laws, 1968, ch. 290, § 6; repealed, Laws, 1984, ch. 495, § 36, and repealed by Laws, 1984, 1st Ex Sess, ch. 8, § 3; reenacted and amended, Laws, 1985, ch. 474, § 43; Laws, 1986, ch. 438, § 28; Laws, 1987, ch. 483, § 29; Laws, 1988, ch. 442, § 26; Laws, 1989, ch. 537, § 25; Laws, 1990, ch. 518, § 26; Laws, 1991, ch. 618, § 25; Laws, 1992, ch. 491 § 26]

Editor's Notes —

Former § 41-55-11 related to minimum insurance coverage for ambulance service operators and waiver of immunity to the extent of such coverage.

AIR AMBULANCE SERVICE DISTRICTS

Sec.	
41-55-31.	Legislative declaration.
41-55-33.	Establishment of air ambulance service districts authorized; boundaries.
41-55-35.	Publication of notice of intention; election.
41-55-37.	Board of directors established; qualifications and term.
41-55-39.	Oath of office.
41-55-41.	Compensation.
41-55-43.	Officers; bond.
41-55-45.	Powers of district.
41-55-47.	Funds for support and maintenance of district.
41-55-49.	Payment to district of tax avails or appropriations; advances for preliminary expenses.
41-55-51.	Acceptance of funds from public or private sources; repayment.
41-55-53.	Deposit of funds.
41-55-55.	Additional counties may join.
41-55-57.	Rates for services.

§ 41-55-31. Legislative declaration.

It is hereby declared as a matter of legislative determination that deaths from highway traffic accidents have reached an alarming rate, that ambulance service is not readily available to many rural outposts in the state, that many deaths could be prevented if prompt medical attention were provided, and that the provision of air ambulance service would be for the general welfare of the entire population of the State.

HISTORY:
Codes, 1942, § 2997-41; Laws, 1971, ch. 457, § 1, eff from and after passage (approved March 29, 1971).

Cross References —
Operation and maintenance of public ambulance service, see §§ 41-55-1 et seq.

Aircraft for use of Governor, state departments and agencies, see §§ 61-13-1 et seq.

§ 41-55-33. Establishment of air ambulance service districts authorized; boundaries.

The boards of supervisors of two or more counties are hereby authorized to act jointly in the establishment of an air ambulance service district by spreading upon their minutes by resolution their intention to create the district. The boundaries of the districts as they are established shall coincide with the nine districts of the Mississippi Highway Safety Patrol as constituted on March 29, 1971.

HISTORY:
Codes, 1942, § 2997-42; Laws, 1971, ch. 457, § 2, eff from and after passage (approved March 29, 1971).

Cross References —
Emergency medical services law, see §§ 41-59-1 et seq.

State highway safety patrol, see §§ 45-3-1 et seq.

§ 41-55-35. Publication of notice of intention; election.

Notice of the intention to create an air ambulance service district shall be published at least three (3) times during a period of twenty-one (21) days in one (1) newspaper circulated in the county in which shall be stated the counties cooperating to create the district, the date the district shall be created, and the purpose of the district. If twenty percent (20%) or one thousand five hundred (1,500) of the qualified electors of said county shall file a written protest against the creation of said district on or before the date specified in such resolution then an election on the question of said county joining said district shall be called and held as provided by law. The determination of said issue shall be determined by a majority of the qualified electors voting in said election.

HISTORY:
Codes, 1942, § 2997-43; Laws, 1971, ch. 457, § 3, eff from and after passage (approved March 29, 1971).

§ 41-55-37. Board of directors established; qualifications and term.

When the Governor shall have received at least two (2) such resolutions from any one (1) air ambulance service district, he shall within five (5) days appoint from the district-at-large his one (1) member of the board of directors of the district. Thereafter the board of supervisors of each county in the district which has certified to its joinder in the district shall appoint one resident of its county as its member of the board of directors of the district. The appointee may by vocation be related to the hospital or medical fields or engaged in an ambulance service but all appointments shall not be limited to persons with such backgrounds. The term of each member shall coincide with that of the appointing official, so that after the initial appointment the terms shall be for a period of four (4) years.

HISTORY:
Codes, 1942, § 2997-44; Laws, 1971, ch. 457, § 4, eff from and after passage (approved March 29, 1971).

§ 41-55-39. Oath of office.

Each director of an air ambulance service district shall take and subscribe to the general oath of office, required by Section 268 of the Constitution of the State of Mississippi, before a chancery clerk that he will faithfully discharge the duties of the office, which oath shall be filed with the said clerk and by him preserved.

HISTORY:
Codes, 1942, § 2997-45; Laws, 1971, ch. 457, § 5, eff from and after passage (approved March 29, 1971).

§ 41-55-41. Compensation.

If compensation is to be paid to any member of the board of directors of an air ambulance service district, it shall be paid by the district from any funds available. In no event shall such compensation exceed the sum of Twenty-two Dollars and Fifty Cents ($22.50) per day.

HISTORY:
Codes, 1942, § 2997-46; Laws, 1971, ch. 457, § 6, eff from and after passage (approved March 29, 1971).

§ 41-55-43. Officers; bond.

The board of directors of an air ambulance service district shall annually elect from its number a president and a vice president of the district, and such other officers as in the judgment of the board are necessary. The president shall be the chief executive officer of the district and the presiding officer of the board, and shall have the same right to vote as any other director. The vice president shall perform all duties and exercise all powers conferred by Sections 41-55-31 through 41-55-57 upon the president when the president is absent or fails or declines to act, except the president's right to vote. The board shall also appoint a secretary and a treasurer who may or may not be members of the board, and it may combine these offices.

The treasurer shall give bond in the sum of not less than Fifty Thousand Dollars ($50,000.00) as set by the board of directors, and each director may be required to give bond in the sum of not less than Ten Thousand Dollars

($10,000.00), with sureties qualified to do business in this state. The premiums on said bonds shall be an expense of the district. The condition of each such bond shall be that the treasurer or directors will faithfully perform all duties of their offices and account for all money or other assets which shall come into his custody as treasurer or director of the district.

HISTORY:
Codes, 1942, § 2997-47; Laws, 1971, ch. 457, § 7, eff from and after passage (approved March 29, 1971).

§ 41-55-45. Powers of district.

(1) Any air ambulance service district, through its board of directors, is hereby empowered:

(a) To develop, in conjunction with the head of any federal and/or state agency as may be involved, a plan for air ambulance services to persons within or without the district, including communications and other systems incident to the efficient performance of such services.

(b) To acquire and maintain any equipment necessary for the provision of such services.

(c) To set reasonable rates for services and charge for each ambulance call made.

(d) To establish rules and regulations for the use of air ambulance services both within and without the boundaries of the district, including cooperation with other air ambulance district organizations within the state and other emergency service agencies, including ground ambulances.

(e) To employ professional managerial, technical, and clerical help as may be needed in providing air ambulance services.

(f) To enter into agreements with ground ambulance facilities.

(g) To borrow, acting by and through the boards of supervisors of the individual counties comprising the district, a sum of money in anticipation of the revenue to be received from taxes levied by such counties for the support of the district; the boards of supervisors in so doing shall follow the requirements of Section 19-9-27.

(h) To make contracts and to execute instruments necessary or convenient to the exercise of the powers, rights, privileges, and functions conferred upon it by Sections 41-55-31 through 41-55-57.

(i) To make, or cause to be made, surveys and engineering investigations relating to the project, or related projects, for the information of the district, to facilitate the accomplishment of the purposes for which it is created.

(j) To apply for and accept grants from the United States of America, or from any corporation or agency created or designated by the United States of America, and to ratify and accept applications heretofore or hereafter made by voluntary associations to such agencies for grants to construct, maintain or operate any project or projects which hereafter may be undertaken or contemplated by said district.

(k) To do any and all other acts or things necessary, requisite or convenient to the exercising of the powers, rights, privileges or functions conferred upon it by Sections 41-55-31 through 41-55-57 or any act of law.

(2) In addition to the powers set forth in subsection (1), the board of directors of any air ambulance service district is further authorized and empowered to exercise all powers conferred upon the governing boards of emergency medical service districts under the provisions of the Emergency Medical Services Act of 1974 and amendments thereto.

HISTORY:

Codes, 1942, § 2997-48; Laws, 1971, ch. 457, § 8; Laws, 1972, ch. 416, § 1; Laws, 1975, ch. 427, eff from and after passage (approved March 27, 1975).

Cross References —

Public ambulance services, generally, see §§ 41-55-1 et seq.

Tax levy for air ambulance service, see § 41-55-47.

Determination of reasonable rates for services, see § 41-55-57.

Emergency medical services law, see §§ 41-59-1 et seq.

§ 41-55-47. Funds for support and maintenance of district.

The board of supervisors of any county of the state which becomes a part of an air ambulance service district may levy a county-wide tax for the support and maintenance of the district in an amount not to exceed one (1) mill. Any county which desires to become a part of an air ambulance service district shall levy each year a tax of not less than one-half (½) mill on all taxable property of the county for the support and maintenance of the district or such county will not be qualified to become or remain a part of the district, with the exception that should any county desire to appropriate an equivalent sum from the general fund or other available funds of the county, as provided in Section 41-55-49, the levying of the tax shall not be mandatory.

Should the board of directors of any air ambulance service district determine that a tax levy of less than one-half (½) mill on the properties comprising the district would be sufficient to maintain and operate the district for the forthcoming fiscal year, such determination shall, by resolution, be spread upon the minutes of the board of directors, which resolution shall recite the amount of the tax levy which would suffice. A certified copy of such resolution shall be delivered to the clerk of the board of supervisors of the counties affected thereby. When so done, the board of supervisors of the counties comprising the district may for the forthcoming year levy a tax of no less than the amount of levy declared to be sufficient in such resolution without losing their qualification as members of the district.

Any tax levy made under the provisions of this section shall be used exclusively for the support and maintenance of the district and shall be made by the boards of supervisors at the time and in the manner that other county tax levies are made. The revenue provided by this section shall not, under any circumstances, be commingled with other county funds.

HISTORY:

Codes, 1942, §§ 2997-49, 2997-56; Laws, 1971, ch. 457, §§ 9, 16; Laws, 1986, ch. 400, § 26; Laws, 1998, ch. 527, § 1, eff from and after passage (approved April 6, 1998).

Cross References —

Homestead exemptions, see §§ 27-33-1 et seq.

Local ad valorem tax levies, see §§ 27-39-301 et seq.

Financial contribution requirement for county to join existing air ambulance service district may not exceed amount authorized by this section, see § 41-55-55.

§ 41-55-49. Payment to district of tax avails or appropriations; advances for preliminary expenses.

The board of supervisors of each county becoming a member of an air ambulance service district shall annually, on or before March 15 of each year beginning with the calendar year in which the district is created, pay or cause to be paid to the depository of the district the total avails from the tax levied on all of the taxable property within the county for the purpose of supporting the district. Such payments shall be made and continued as long as the district remains in existence, there is need therefor and the county remains a part thereof. The board of supervisors of each county shall annually provide the district the total avails from the tax levied on all taxable property within the county for such purpose; in lieu of a tax levy the board of supervisors may appropriate an equivalent sum from the general fund or other available funds of the county.

Any municipality or county which is within the territorial limits of the district may advance funds to the district to pay the preliminary expenses of the district, including reports, organization or administration expenses, on such terms of repayment as the governing body of such municipality or county shall determine.

HISTORY:

Codes, 1942, § 2997-50; Laws, 1971, ch. 457, § 10, eff from and after passage (approved March 29, 1971).

Cross References —

Depository of district funds, see § 41-55-53.

§ 41-55-51. Acceptance of funds from public or private sources; repayment.

The board of directors of an air ambulance service district is hereby authorized and empowered to accept grants, loans, gifts, bequests or funding from any source, public or private, that the granting agency has authority to provide, but in no circumstances shall the acceptance of any such funding obligate any district to repay a sum in excess of the avails of the tax levies set forth in Section 41-55-47.

HISTORY:

Codes, 1942, § 2997-51; Laws, 1971, ch. 457, § 11, eff from and after passage (approved March 29, 1971).

§ 41-55-53. Deposit of funds.

All funds of an air ambulance service district shall be deposited in the bank or banks located within the district qualified as county or state depositories which the board of directors of the district desire to utilize.

HISTORY:
Codes, 1942, § 2997-52; Laws, 1971, ch. 457, § 12, eff from and after passage (approved March 29, 1971).

Cross References —
State depositories, see §§ 27-105-1 et seq.
Depositories for funds of local governments, see §§ 27-105-301 et seq.

§ 41-55-55. Additional counties may join.

After an air ambulance service district has been formed, any other county within the same highway patrol district or any county lying immediately adjacent to the district may join the district by the same procedure as if it were initiating the district, including the appointment of an additional member to the existing board of directors.

After a district has been in existence for at least fifteen (15) years, a county may join the district only with the approval of the board of directors of the district after the board of directors first finds that the services to the new member county will not result in an undue financial burden upon the district. The board of directors of the district may establish guidelines for the admission of new member counties but may not require a financial contribution in excess of that authorized by Section 41-55-47, Mississippi Code of 1972.

HISTORY:
Codes, 1942, § 2997-53; Laws, 1971, ch. 457, § 13; Laws, 1972, ch. 416, § 2; Laws, 1993, ch. 372, § 1, eff from and after July 1, 1993.

§ 41-55-57. Rates for services.

The rates for services hereunder shall be determined by the board of directors with regard to what is reasonable in the individual air ambulance service district.

HISTORY:
Codes, 1942, § 2997-54; Laws, 1971, ch. 457, § 14, eff from and after passage (approved March 29, 1971).

Cross References —
Power of district board of directors to set reasonable rates for services, see § 41-55-45.

CHAPTER 57.

VITAL STATISTICS

Bureau Established. 41-57-1
Births and Deaths. 41-57-3
Marriages. 41-57-41

BUREAU ESTABLISHED

Sec.
41-57-1. Bureau of vital statistics established.
41-57-2. Certain persons not entitled to access to records.

§ 41-57-1. Bureau of vital statistics established.

A bureau of vital statistics shall be established by the State Board of Health, which shall provide an adequate system for the registration of births and deaths and preservation of vital statistics on forms prescribed by said Board of Health, and which shall provide adequate methods for enforcing the laws and orders of said Board of Health relating to health matters of the state.

HISTORY:

Codes, Hemingway's 1917, § 4868; 1930, § 4904; 1942, § 7060; Laws, 1912, ch. 149; Laws, 1938, ch. 269; Laws, 1942, ch. 307; Laws, 1944, ch. 309, § 1; Laws, 1962, ch. 400; Laws, 1968, ch. 372, § 1; Laws, 1971, ch. 406, § 1, eff from and after passage (approved March 23, 1971).

Cross References —

Furnishing free copies of records concerning veterans, see § 35-3-9.

Formulation of system for gathering morbidity and vital statistics, see § 41-57-7.

JUDICIAL DECISIONS

1. In general.

Certified copy of death record showing deceased's age at time of death where there was no birth record was inadmissible in insurance case. Clegg v. Johnson, 164 Miss. 198, 143 So. 848, 1932 Miss. LEXIS 223 (Miss. 1932).

RESEARCH REFERENCES

Am. Jur.

39 Am. Jur. 2d, Health § 52.

CJS.

39A C.J.S., Health and Environment §§ 69, 70.

§ 41-57-2. Certain persons not entitled to access to records.

Records in the possession of the Mississippi Department of Health, bureau of vital statistics, which would be of no legitimate and tangible interest to a person making a request for access to such records, shall be exempt from the provisions of the Mississippi Public Records Act of 1983; provided, however, nothing in this section shall be construed to prohibit any person with a legitimate and tangible interest in such records from having access thereto.

HISTORY:

Laws, 1983, ch. 424, § 19, eff from and after July 1, 1982.

Editor's Notes —

"The Mississippi Public Records Act of 1983", referred to in this section, is Laws of 1983, ch. 424, §§ 1-9, which appears as §§ 25-61-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Information provided pursuant to § 41-57-13(2) to the circuit clerk, tax assessor, and election commission of each county would not be exempt from the Public Records Act. 2003 Miss. Op. Att'y Gen. 555.

BIRTHS AND DEATHS

Sec.
41-57-3. State registrar of vital records; safeguarding of records.
41-57-5. State may be divided into registration districts.
41-57-7. Board of health to formulate a system for gathering statistics.
41-57-9. Certificates of registrar to be prima facie evidence.
41-57-11. Payment for birth and death certificates.
41-57-13. Corrections and amendments to death certificates; lists of deaths to be furnished to county registrar and county election commissioners.
41-57-14. Social security numbers of parents required to file birth certificate.
41-57-15. Board of supervisors may appropriate funds for perfecting registration of records.
41-57-17. Repealed.
41-57-19. Proceedings to adjudicate true date of birth of person whose birth was not registered.
41-57-21. Proceedings to correct incomplete birth certificate or birth certificate having incorrect first name, middle name, place or sex.
41-57-23. Proceedings to correct birth certificate containing major deficiencies.
41-57-25. Birth certificate furnished free to armed forces volunteer.
41-57-26. Death certificate of person who was an honorably discharged U.S. Armed Forces veteran or who was killed or died during active duty service furnished without charge.
41-57-27. Penalty.
41-57-29. Repealed.
41-57-31. Certificate of birth resulting in stillbirth issued upon request of parent; parents to be notified of availability of and procedure for obtaining certificate; contents of certificate.

§ 41-57-3. State registrar of vital records; safeguarding of records.

The secretary of the State Board of Health shall appoint the state registrar of vital records in accordance with classification standards of education and experience. It shall be his duty to carry into effect the rules, regulations and orders of the State Board of Health that are provided for the office of vital records registration. The said board shall provide for such clerical and other assistance as may be necessary, and may fix the compensation of persons thus employed within the amount appropriated for the health work by the legislature. The said board shall provide suitable apartments, properly equipped with fireproof vaults and filing cases, for the permanent and safe preservation of all official records made and returned to the office of vital records registration.

HISTORY:
Codes, Hemingway's 1917, § 4869; 1930, § 4905; 1942, § 7061; Laws, 1912, ch. 149; Laws, 1978, ch. 326, § 1, eff from and after July 1, 1978.

Cross References —
Registration of marriages, see § 41-57-48.

JUDICIAL DECISIONS

1. Determination of age.
Appellant's second petition for post-conviction relief after he pled guilty to statutory rape was properly denied because there was no merit to his calculation of the victim's age from the time of conception rather than from the time of birth; neither statute nor case law involving the use of birth certificates to determine age contained a nine-month adjustment. McKenzie v. State, 946 So. 2d 392, 2006 Miss. App. LEXIS 388 (Miss. Ct. App. 2006).

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. 2d, Health § 108.
7 Am. Jur. Legal Forms, 2d, Death, §§ 85:3, 85:4 (certificate of death).
7 Am. Jur. Legal Forms 2d, Death, § 85:5 (application for death certificate).
13 Am. Jur. Pl & Pr Forms (Rev), Health, Form 43 (petition or application-to establish record of birth or death).

CJS.
39A C.J.S., Health and Environment § 41.

§ 41-57-5. State may be divided into registration districts.

The State Board of Health may divide the state into registration districts to provide vital statistics, defining and designating the boundaries thereof and appointing local registrars in each district.

HISTORY:
Codes, Hemingway's 1917, § 4870; 1930, § 4906; 1942, § 7062; Laws, 1912, ch. 149.

Cross References —
State Board of Health, see §§ 41-3 et seq.

Power of the State Board of Health to establish programs concerning registration of births and deaths and other vital events, see § 41-3-15.

§ 41-57-7. Board of health to formulate a system for gathering statistics.

The State Board of Health shall formulate and promulgate rules and regulations for the proper reporting and registration of morbidity and vital statistics, prescribing the method and form of making such registration.

Each application or filing made under this section shall include the Social Security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

HISTORY:
Codes, Hemingway's 1917, § 4871; 1930, § 4907; 1942, § 7063; Laws, 1912, ch. 149; Laws, 1997, ch. 588, § 17, eff from and after July 1, 1997.

Editor's Notes —
Laws of 1997, ch. 588, § 150, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

JUDICIAL DECISIONS

1. In general.

It was error for the trial court to exclude rule 8 of the state board of health stating: "Provided that a certificate of birth shall not be required for a child that has not advanced to the fifth month of utero-gestation," since the rule tended to explain what the reporting physician meant by the use of the words "about six months" as to the period of gestation of a stillborn child, he not being required to report the birth unless the child had advanced to the fifth month of gestation. Life & Casualty Ins. Co. v. Walters, 190 Miss. 761, 198 So. 746, 200 So. 732, 1940 Miss. LEXIS 183 (Miss. 1940).

§ 41-57-9. Certificates of registrar to be prima facie evidence.

Any copy of the records of birth, sickness or death, when properly certified to by the state registrar of vital statistics, to be a true copy thereof, shall be prima facie evidence in all courts and places of the facts therein stated. A facsimile signature of the registrar shall be sufficient for certification when the certificate shall have impressed thereon the seal of the Mississippi Department of Public Health.

HISTORY:

Codes, Hemingway's 1917, § 4872; 1930, § 4908; 1942, § 7064; Laws, 1912, ch. 149; Laws, 1960, ch. 352.

Editor's Notes —

Laws of 1978, ch. 326, § 1, effective July 1, 1978, changed the title of the state registrar of vital statistics, referred to in this section, to be the state registrar of vital records. See § 41-57-3.

Cross References —

Certification of copies of public records and admissibility thereof in evidence, see § 13-1-77.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Particular applications.
3. —Criminal cases.

1. In general.

The privileged communication statute and statute permitting introduction in evidence of vital statistics records must be construed together. Life & Casualty Ins. Co. v. Walters, 180 Miss. 384, 177 So. 47, 1937 Miss. LEXIS 112 (Miss. 1937).

This section [Code 1942, § 7064] does not repeal the rule as to privileged communication of physicians. Hunter v. Hunter, 127 Miss. 683, 90 So. 440, 1921 Miss. LEXIS 271 (Miss. 1921).

2. Particular applications.

Chancellor did not err in taking child custody from the child's biological mother, and giving custody to the nonbiological father. Under Mississippi law, the nonbiological father was the legal father because he had signed the child's birth certificate. Thornhill v. Van Dan, 918 So. 2d 725, 2005 Miss. App. LEXIS 171 (Miss. Ct. App. 2005).

A death certificate listing cause of death as bronchio-alveolar carcinoma was prima facie proof of primary cause of Workers' Compensation claimant's death. Sonford Products Corp. v. Freels, 495 So. 2d 468, 1986 Miss. LEXIS 2658 (Miss. 1986), overruled, Bickham v. Department of Mental Health, 592 So. 2d 96, 1991 Miss. LEXIS 978 (Miss. 1991).

In action on life policy excluding liability if insured was pregnant at date of policy and death resulted from such pregnancy, certified copies of vital statistics records consisting of insured's attending physician's reports to the Department of Vital Statistics showing required facts with reference to death of the insured and birth of child were admissible, since, by adoption of statute permitting introduction of records of vital statistics, legislature intended to except from operation of the privileged communications statute the vital statistics records. Life & Casualty Ins. Co. v. Walters, 180 Miss. 384, 177 So. 47, 1937 Miss. LEXIS 112 (Miss. 1937).

Since certificate hereunder showing insured's death from childbirth and containing statement of attending physician that the period of gestation of the stillborn child was about six months, was merely prima facie evidence, it was for the jury to determine whether insured was pregnant at the time the policy was issued which was less than six months before insured's death in regard to clause in the policy excluding liability for death from pregnancy existing at the time of issuance of the policy. Life & Casualty Ins. Co. v. Walters, 180 Miss. 384, 177 So. 47, 1937 Miss. LEXIS 112 (Miss. 1937).

Where there was no birth record, certified copy of death record showing deceased's age at the time of his death was inadmissible in insurance case. Clegg v. Johnson, 164 Miss. 198, 143 So. 848, 1932 Miss. LEXIS 223 (Miss. 1932).

Certificate of death issued by bureau of vital statistics under this section [Code 1942, § 7064], which stated that death was suicidal, is not admissible in evidence in an action on an accident policy. Massachusetts Protective Ass'n v. Cranford, 137 Miss. 876, 102 So. 171, 1924 Miss. LEXIS 211 (Miss. 1924).

3. —Criminal cases.

While the introduction of a death certificate in a criminal case is permitted under the section [Code 1942, § 7064], the use of the certificate is limited to the physical cause of death. Flowers v. State, 243 So. 2d 564, 1971 Miss. LEXIS 1520 (Miss. 1971).

In a homicide prosecution, while it was error to admit the record of an autopsy performed on the body of the deceased by doctors at a hospital, showing death by a gunshot wound through the head, as contrary to the constitutional right of an accused to be confronted by witnesses against him, but where the testimony of other witnesses, including the doctor who examined the deceased, and where statements of the defendant herself to officers established the fact that the deceased died of a gunshot wound to the head, the error was harmless. Flowers v. State, 243 So. 2d 564, 1971 Miss. LEXIS 1520 (Miss. 1971).

RESEARCH REFERENCES

ALR.

Official death certificate as evidence of cause of death in civil or criminal action. 21 A.L.R.3d 418.

Am. Jur.

22A Am. Jur. 2d, Death §§ 426, 427.

29A Am. Jur. 2d, Evidence §§ 1313 et seq.

7 Am. Jur. Legal Forms 2d, Death § 85:6.

4 Am. Jur. Proof of Facts, Death, Proof No. 2 (death certificate).

15 Am. Jur. Proof of Facts, Death Certification § 12 (discrediting death certificate).

28 Am. Jur. Proof of Facts 2d 81, Fact of Death.

2 Am. Jur. Trials 409, Locating Public Records.

9 Am. Jur. Trials 131, Actions on Health and Accident Insurance Policies.

Practice References.

Young, Trial Handbook for Mississippi Lawyers §§ 19:19, 24:19.

CJS.

25A C.J.S., Death § 4.

32A C.J.S., Evidence §§ 1098 et seq., 1286et seq.

§ 41-57-11. Payment for birth and death certificates.

(1) Each local registrar shall be paid the sum of One Dollar ($1.00) for each birth and each death certificate properly made out, and in the manner and on the form required by the State Board of Health. Such sum shall be paid by the board of supervisors of the county in which the births and deaths occurred, upon certification made monthly to the board of supervisors by the state registrar.

However, any local registrar shall receive only Fifty Cents (50¢) for each birth and each death certificate sent in to the Bureau of Vital Statistics improperly completed or sent in at a later time than that fixed by the regulations of the State Board of Health.

(2) In addition to any fees established and collected by the State Board of Health for the issuance of original and copies of birth certificates, there shall be charged a fee of One Dollar ($1.00) for each original and each copy of a birth certificate. This additional fee shall be deposited into the Mississippi Chil-

dren's Trust Fund created by Section 93-21-305 and shall be used only as set forth in Sections 93-21-301 through 93-21-311. This additional fee shall not be added to birth certificates furnished free as provided in Sections 35-3-9 and 41-57-25.

HISTORY:

Codes, Hemingway's 1917, § 4873; 1930, § 4909; 1942, § 7065; Laws, 1912, ch. 149; Laws, 1928, ch. 44; Laws, 1936, ch. 209; Laws, 1946, ch. 473, § 1; Laws, 1952, ch. 339; Laws, 1954, Ex. Sess. ch. 14, §§ 1, 2; Laws, 1958, ch. 357; Laws, 1966, ch. 457, § 1; Laws, 1981, ch. 425, § 1; Laws, 1989, ch. 509, § 7, eff from and after July 1, 1989.

Cross References —

Furnishing free copies of records concerning veterans, see § 35-3-9.

Furnishing birth certificate of armed forces volunteer without charge, see § 41-57-25.

Creation of Mississippi Children's Trust Fund, see § 93-21-305.

§ 41-57-13. Corrections and amendments to death certificates; lists of deaths to be furnished to county registrar and county election commissioners.

(1) Death certificate errors in the recording of personal information of the deceased may be corrected by affidavit of the informant and the funeral director of the funeral home that disposed of the body. Items in the medical certification or of a medical nature may be amended upon receipt of the specified amendment form from (a) the person originally certifying the information or, if deceased or incapacitated, from the person responsible for the completion of such items, or (b) the State Medical Examiner. All other amendments to a death certificate require adjudication by a chancery court in the county of residence of the complainant or in any chancery court district in the state if the complainant is a nonresident. In all such proceedings, the State Department of Health, the State Medical Examiner and the county medical examiner or county medical examiner investigator who certified the information shall be made defendants. No death certificate shall be changed or amended by the State Medical Examiner or any county medical examiner or county medical examiner investigator after he has resigned or been removed from his office as the State Medical Examiner, county medical examiner or county medical examiner investigator.

(2) The local registrar of births and deaths in each county in the state shall, at least monthly, supply the county registrar, the tax assessor and the chairman of the county election commission of each county a list of deaths in the counties of individuals of voting age who have not been previously listed. Such lists shall include the following information for each deceased person: full name (as recorded on the death certificate), social security number, date of death, sex, race, age and usual place of residence.

(3) No such payment as is provided for in Section 41-57-11 shall be made by the board of supervisors unless and until the local registrar shall certify that a list of all deaths of individuals of voting age has been filed with the county voting registrar, tax assessor and with the chairman of the county election commission of the last county of residence of the decedent in this state.

(4) In the event that the decedent is a female, who at the time of her death was between the ages of ten (10) and fifty (50) years old, the physician, medical

examiner, coroner or other official who certifies the decedent's cause of death shall indicate, where appropriately designated, on the death certificate whether (a) the decedent was pregnant at the time of her death; (b) the decedent had given birth within the preceding ninety (90) days; or (c) the decedent had a miscarriage within the preceding ninety (90) days.

HISTORY:

Codes, Hemingway's 1917, § 4873; 1930, § 4909; 1942, § 7065; Laws, 1912, ch. 149; Laws, 1928, ch. 44; Laws, 1936, ch. 209; Laws, 1946, ch. 473, § 1; Laws, 1952, ch. 339; Laws, 1954, Ex. Sess. ch. 14, §§ 1, 2; Laws, 1958, ch. 357; Laws, 1966, ch. 457, § 1; Laws, 1972, ch. 466, § 1; Laws, 1989, ch. 511, § 2; Laws, 1996, ch. 485, § 2; Laws, 1997, ch. 472, § 1; Laws, 1998, ch. 311, § 1; Laws, 2002, ch. 424, § 1, eff from and after July 1, 2002.

Cross References —

Autopsy, reports, immunity from liability, and review of determination, see § 41-61-65.

OPINIONS OF THE ATTORNEY GENERAL

Information provided pursuant to subsection (2) of this section to the circuit clerk, tax assessor, and election commission of each county would not be exempt from the Public Records Act. 2003 Miss. Op. Att'y Gen. 555.

§ 41-57-14. Social security numbers of parents required to file birth certificate.

(1) If the mother was married at the time of either conception or birth, or at any time between conception and birth, the name of the husband shall be entered on the certificate of birth as the father of the child. The social security number of each parent of a child born within this state shall be furnished to the local registrar of vital records at the time of filing the certificate of birth, but such information shall not appear on the portion of the certificate to be issued as a certified copy. Such information shall be sent to the Office of Vital Records Registration of the State Department of Health along with the certificate of birth and shall be retained by the office. The information shall not be disclosed to any person except as authorized by paragraph (2) of this section or as allowed by Section 41-57-2.

(2) The Office of Vital Records Registration shall make available to the Division of Child Support Enforcement of the Mississippi Department of Human Services information concerning the names and social security numbers of the parents obtained under the requirements of paragraph (1) for the use in establishing paternity or enforcing child support obligations. Information obtained by the Division of Child Support Enforcement under this section may be used in any action or proceeding before any court, administrative tribunal, or other proceeding for the purpose of establishing paternity, establishing a child support obligation, collecting child support or locating persons owing such an obligation.

HISTORY:

Laws, 1994, ch. 544, § 2, eff from and after July 1, 1994.

§ 41-57-15. Board of supervisors may appropriate funds for perfecting registration of records.

The board of supervisors of any county may appropriate additional funds, not to exceed Fifty Dollars ($50.00) per month, to be used under the direction of the State Board of Health, in perfecting the registration of vital records.

HISTORY:
Codes, Hemingway's 1917, § 4873; 1930, § 4909; 1942, § 7065; Laws, 1912, ch. 149; Laws, 1928, ch. 44; Laws, 1936, ch. 209; Laws, 1946, ch. 473, § 1; Laws, 1952, ch. 339; Laws, 1954, Ex. Sess. ch. 14, §§ 1, 2; Laws, 1958, ch. 357; Laws, 1966, ch. 457, § 1, eff from and after 30 days after passage (approved February 25, 1966).

§ 41-57-17. Repealed.

Repealed by Laws, 1989, ch. 511, § 8, eff from and after July 1, 1989.

[Codes, Hemingway's 1917, § 4868; 1930, § 4904; 1942, § 7060; Laws, 1912, ch. 149; Laws, 1938, ch. 269; Laws, 1942, ch. 307; Laws, 1944, ch. 309, § 1; Laws, 1962, ch. 400; Laws, 1968, ch. 372, § 1; Laws, 1971, ch. 406, § 1]

Editor's Notes —
Former § 41-57-17 pertained to birth certificates of adopted children.

§ 41-57-19. Proceedings to adjudicate true date of birth of person whose birth was not registered.

Any person who was born in the State of Mississippi and whose birth has not been registered and who is unable to secure the proof now required by the registrar of births to register the same, may file a petition under oath in the chancery court of the county of the residence of the petition, or in any chancery court district of the state if the petitioner be a non-resident, setting out the true date of the birth of the petitioner and other facts necessary. The clerk shall issue a summons for the State Board of Health, which summons may be served on the executive secretary, the registrar of vital statistics or a duly qualified county registrar, thirty (30) days prior to the time of the hearing, to appear and contest the same. Alternatively process can be waived as provided by Section 13-3-71. The said petition may be heard by the chancellor in term time or in vacation, and the same shall not be taken as confessed, but proof shall be made of the allegation in the same. When a decree is entered adjudicating the true date of the birth of the petitioner, upon a certified copy of the decree being furnished to the registrar of vital statistics showing the true date of the birth of the petitioner, the same shall be registered upon the proper records of the State Board of Health.

HISTORY:
Codes, Hemingway's 1917, § 4868; 1930, § 4904, 1942, § 7060; Laws, 1912, ch. 149; Laws, 1938, ch. 269; Laws, 1942, ch. 307; Laws, 1944, ch. 309, § 1; Laws, 1962, ch. 400; Laws, 1968, ch. 372, § 1; Laws, 1971, ch. 406, § 1, eff from and after passage (approved March 23, 1971).

Editor's Notes —
Laws of 1978, ch. 326, § 1, effective July 1, 1978, changed the title of the state registrar of

vital statistics, referred to in this section, to be the state registrar of vital records. See § 41-57-3.

Section 13-3-71, referred to in this section, was repealed by Laws of 1991, ch. 573, § 141, eff from and after July 1, 1991.

RESEARCH REFERENCES

Am. Jur.

13 Am. Jur. Pl & Pr Forms (Rev), Health, Forms 45, 46 (affidavits – in support of petition or application to establish fact of birth).

13 Am. Jur. Pl & Pr Forms (Rev), Health, Forms 47, 48 (notice and hearing – on application for order establishing fact of birth).

13 Am. Jur. Pl & Pr Forms (Rev), Health, Forms 49, 50 (order – establishing fact of birth).

13 Am. Jur. Pl & Pr Forms (Rev), Health, Form 51 (order – directing state official to record birth).

13 Am. Jur. Pl & Pr Forms (Rev), Health, Form 52 (notice – appeal from failure or refusal of state official to register fact of birth).

13 Am. Jur. Pl & Pr Forms (Rev), Health, Forms 41-43 (application-to establish record of birth or death).

§ 41-57-21. Proceedings to correct incomplete birth certificate or birth certificate having incorrect first name, middle name, place or sex.

Where there has been a bona fide effort to register a birth and the certificate thereof on file with the office of vital records does not divulge all of the information required by said certificate, or such certificate contains an incorrect first name, middle name, or sex, then the state registrar of vital records may, in his discretion, correct such certificate upon affidavit of at least two (2) reputable persons having personal knowledge of the facts in relation thereto. All other alterations shall be made as provided in Section 41-57-23. Anyone giving false information in such affidavit shall be subject to the penalties of perjury.

HISTORY:

Codes, Hemingway's 1917, § 4868; 1930, § 4904; 1942, § 7060; Laws, 1912, ch. 149; Laws, 1938, ch. 269; Laws, 1942, ch. 307; Laws, 1944, ch. 309, § 1; Laws, 1962, ch. 400; Laws, 1968, ch. 372, § 1; Laws, 1971, ch. 406, § 1; Laws, 1978, ch. 375, § 1; Laws, 1983, ch. 522, § 33, eff from and after July 1, 1983.

Cross References —

Crime of perjury, see § 97-9-59.

JUDICIAL DECISIONS

1. In general.

The legislature intended to grant the Health Department the discretion to correct any combination of errors among the items listed in the statute and, therefore, the Health Department was within its discretion to correct both the name and the gender on a particular birth certificate. Dunn v. Mississippi State Dep't of Health, 708 So. 2d 67, 1998 Miss. LEXIS 59 (Miss. 1998).

§ 41-57-23. Proceedings to correct birth certificate containing major deficiencies.

(1) Any petition, bill of complaint or other proceeding filed in the chancery court to: (a) change the date of birth by two (2) or more days, (b) change the surname of a child, (c) change the surname of either or both parents, (d) change the birthplace of the child because of an error or omission of such information as originally recorded, or (e) make any changes or additions to a birth certificate resulting from a legitimation, filiation or any changes not specifi-

cally authorized elsewhere by statute, shall be filed in the county of residence of the petitioner or filed in any chancery court district of the state if the petitioner be a nonresident petitioner. In all such proceedings, the State Board of Health shall be made a respondent therein, and a certified copy of the petition, bill of complaint or other proceeding shall be forwarded to the State Board of Health. Process may be served upon the State Registrar of Vital Records. The State Board of Health shall file an answer to all such proceedings within the time as provided by general law. The provisions of this section shall not apply to adoption proceedings. Upon receipt of a certified copy of a decree, which authorizes and directs the State Board of Health to alter the certificate, it shall comply with all of the provisions of such decree.

(2)(a) If a petition, bill of complaint or other proceeding is filed in the Tribal Court of the Mississippi Band of Choctaw Indians for any of the purposes described in paragraphs (a) through (e) of subsection (1) with regard to the birth certificate of a person of Mississippi Choctaw descent, the tribal court shall have the same authority as the chancery court would have to make any of those changes described in those paragraphs in subsection (1), and the State Board of Health shall comply with a decree from the tribal court in the same manner as if the decree was issued by the chancery court. In all those proceedings in the tribal court, the State Board of Health shall be made a respondent therein, and a certified copy of the petition, bill of complaint or other proceeding shall be forwarded to the State Board of Health.

(b) The Tribal Court of the Mississippi Band of Choctaw Indians is not the exclusive venue for making changes to the birth certificates of persons of Mississippi Choctaw descent, and changes to the birth certificates of persons of Mississippi Choctaw descent may also be made in proceedings in the chancery court.

(c) Nothing in this subsection shall be construed to enlarge the subject matter jurisdiction of the Tribal Court of the Mississippi Band of Choctaw Indians.

(3) If a child is born to a mother who was not married at the time of conception or birth, or at any time between conception and birth, and the natural father acknowledges paternity, the name of the father shall be added to the birth certificate if a notarized affidavit by both parents acknowledging paternity is received on the form prescribed or as provided in Section 93-9-9. The surname of the child shall be that of the father except that an affidavit filed at birth by both listed mother and father may alter this rule. In the event the mother was married at the time of conception or birth, or at any time between conception and birth, or if a father is already listed on the birth certificate, action must be taken under Section 41-57-23(1) to add or change the name of the father.

(4)(a) A signed voluntary acknowledgment of paternity is subject to the right of any signatory to rescind the acknowledgment within the earlier of:

(i) One (1) year; or

(ii) The date of a judicial proceeding relating to the child, including a proceeding to establish a support order, in which the signatory is a party.

(b) After the expiration of the one-year period specified in paragraph (a)(i) of this subsection a signed voluntary acknowledgment of paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger; the legal responsibilities, including child support obligations, of any signatory arising from the acknowledgment may not be suspended during the pendency of the challenge, except for good cause shown.

HISTORY:

Codes, Hemingway's 1917, § 4868; 1930, § 4904; 1942, § 7060; Laws, 1912, ch. 149; Laws, 1938, ch. 269; Laws, 1942, ch. 307; Laws, 1944, ch. 309, § 1; Laws, 1962, ch. 400; Laws, 1968, ch. 372, § 1; Laws, 1971, ch. 406, § 1; Laws, 1978, ch. 375, § 2; Laws, 1983, ch. 522, § 34; Laws, 1989, ch. 511, § 3; Laws, 1994, ch. 544, § 3; Laws, 1994, ch. 614, § 1; Laws, 1999, ch. 512, § 9; Laws, 2012, ch. 387, § 1; Laws, 2014, ch. 339, § 1, eff from and after July 1, 2014.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a punctuation error in (1) by inserting a comma preceding "or (e) make any changes" and corrected an error in an internal statutory reference in (4)(b) by substituting "specified in paragraph (a)(i) of this subsection" for "specified in subsection (3)(a)(i) of this section." The Joint Committee ratified the correction at its July 24, 2014, meeting.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Acknowledgement of paternity.
3. Effect of signing birth certificate.
4. Illustrative cases.

1. In general.

Chancellor erred by changing a child's surname on the child's birth certificate in a grandparent visitation proceeding because Miss. Code Ann. § 41-57-23 applied, but the Mississippi State Board of Health was not included as a necessary party. Arrington v. Thrash, 122 So. 3d 144, 2013 Miss. App. LEXIS 623 (Miss. Ct. App. 2013).

As a father's chid already had a birth certificate with her mother's surname listed as her own, he was required to make the State Board of Health a respondent in his request to change her surname to his own pursuant to Miss. Code Ann. § 41-57-23(1); as he failed to do so, his request for the name change was properly denied. Powell v. Crawley, 106 So. 3d 864, 2013 Miss. App. LEXIS 27 (Miss. Ct. App. 2013).

In a proceeding by a former husband to have his name deleted from the birth certificate of an infant born to his former wife following their divorce, the chancery court erred in failing to grant the petition where the evidence established that the infant had been born in May, 1978, but the parties had not lived together since October, 1976, and where there was testimony that the former wife had informed her former husband and his mother that he was not the father of the child and that the former wife had listed the name of another man as the father of the child in an application to the welfare department. McLeod v. State Board of Health, 393 So. 2d 479, 1981 Miss. LEXIS 1914 (Miss. 1981).

2. Acknowledgement of paternity.

Refusal to award attorney's fees to the mother in a child custody action was proper pursuant to the Mississippi Litigation Accountability Act, Miss. Code Ann. § 11-55-1 et seq., because the father's claim for custody was not frivolous. He was and remained the legal father of the children because the parties had voluntarily signed an acknowledgment of paternity knowing that the father was not the biological father of the children, Miss. Code Ann. § 41-57-23(2) and (3). Adcock v. Van Norman, 918 So. 2d 747, 2005 Miss. App. LEXIS 208 (Miss. Ct. App.), aff'd in part and rev'd in part, 917 So. 2d 86, 2005 Miss. LEXIS 830 (Miss. 2005).

3. Effect of signing birth certificate.

Where appellant was conceived while a decedent was married to his mother but was born after they divorced, as the decedent had the opportunity to establish his paternity of appellant but did not do so, the fact that he signed appellant's birth certificate as appellant's "listed" father instead of his "natural" father did not establish his paternity of appellant under Miss. Code Ann. § 93-9-28. Ivy v. Ivy (In re Estate of Ivy), 121 So. 3d 226, 2012 Miss. App. LEXIS 816 (Miss. Ct. App. 2012), cert.

denied, 121 So. 3d 918, 2013 Miss. LEXIS 487 (Miss. 2013).

Chancellor did not err in taking child custody from the child's biological mother, and giving custody to the nonbiological father. Under Mississippi law, the nonbiological father was the legal father because he had signed the child's birth certificate. Thornhill v. Van Dan, 918 So. 2d 725, 2005 Miss. App. LEXIS 171 (Miss. Ct. App. 2005).

4. Illustrative cases.

Because the maternal grandparents, who were awarded physical custody of a father's child, did not contest the change-of-name request by the father and failed to show by a preponderance of the evidence that it was not in the best interest of the child to bear the father's surname, the appellate court found that it was appropriate to reverse the decision of the chancery court and to render the change of the child's surname from the mother's surname to the father's surname. Flynn v. Bland, 213 So. 3d 85, 2016 Miss. App. LEXIS 564 (Miss. Ct. App. 2016), cert. denied, 209 So. 3d 433, 2017 Miss. LEXIS 70 (Miss. 2017).

OPINIONS OF THE ATTORNEY GENERAL

An acknowledgment of paternity in the manner prescribed prior to July 1, 1994, was sufficient to impose liability upon the natural father. 1998 Miss. Op. Att'y Gen. 813.

Where the chancery court is contemplating issuing an order directing the Department of Health to change a birth certificate in fact situations covered by Section 41-57-23, the chancery court should require that the Department of Health be made a party to the lawsuit; nevertheless, in cases where a chancery court has ordered the Department of Health to make a correction to a birth certificate without having first made the department a party, the department should proceed based on that court order. Thompson, Jr., 2000 Miss. Op. Att'y Gen. 507.

§ 41-57-25. Birth certificate furnished free to armed forces volunteer.

Any person who is volunteering for one of the armed forces of the United States is entitled to a certified copy of his birth certificate from the State Board of Health immediately upon application and at no expense to the applicant or his recruiting officer.

HISTORY:

Codes, 1942, § 7064.5; Laws, 1971, ch. 327, § 1, eff from and after passage (approved March 1, 1971).

Cross References —

Additional fee for each original and each copy of a birth certificate to be deposited into the Mississippi Children's Trust Fund, see § 41-57-11.

§ 41-57-26. Death certificate of person who was an honorably discharged U.S. Armed Forces veteran or who was killed or died during active duty service furnished without charge.

The Office of Vital Records Registration shall furnish up to five (5) certified copies of the death certificate of any deceased person who was an honorably discharged veteran of the Armed Forces of the United States or who was killed or died while serving on active duty in the Armed Forces of the United States, without charge, to any person or entity that is authorized to receive death certificates. The applicant for a copy of the death certificate must furnish such written evidence of the deceased person's service in the Armed Forces of the United States as required by the office. Copies of death certificates furnished under the authority under this section shall be in addition to any copies of death certificates furnished without charge under the authority of Section 35-3-9.

HISTORY:
Laws, 2016, ch. 332, § 1, eff from and after July 1, 2016.

§ 41-57-27. Penalty.

Any person or persons who shall violate any rule, regulation or order of the State Board of Health relative to recording, reporting or filing information for the Bureau of Vital Statistics, or who shall willfully neglect or refuse to perform any duties imposed upon them by said orders, or who shall furnish false information for the purpose of making incorrect records for said bureau, or who shall willfully furnish false information to said bureau for the purpose of establishing a false identity, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than Five Hundred Dollars ($500.00) or be imprisoned in the county jail not exceeding six (6) months, or suffer both such fine and imprisonment, in the discretion of the court.

HISTORY:
Codes, Hemingway's 1917, § 4874; 1930, § 4910; 1942, § 7066; Laws, 1912, ch. 149; Laws, 1983, ch. 522, § 35; Laws, 1989, ch. 511, § 4, eff from and after July 1, 1989.

Cross References —
Crime of perjury, see § 97-9-59.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 41-57-29. Repealed.

Repealed by Laws 1992, ch. 391, § 2, eff from and after July 1, 1993. [Laws, 1992, ch. 391, § 1]

Editor's Notes —
Former § 41-57-29 required the social security numbers of parents or alleged parents to be filed with certificate of birth, authorized their use in paternity and support proceedings, and directed the department to take bids for genetic testing. For present similar provisions, see § 41-57-14.

§ 41-57-31. Certificate of birth resulting in stillbirth issued upon request of parent; parents to be notified of availability of and procedure for obtaining certificate; contents of certificate.

(1) As used in this section, the following terms shall be defined as provided in this section, unless the context otherwise requires:

(a) "Certificate of birth resulting in stillbirth" means a birth certificate issued to record and memorialize the birth of a stillborn child.

(b) "Stillbirth" or "stillborn" means an unintended, intrauterine fetal death occurring in this state after a gestational age of not less than twenty (20) completed weeks.

(2) For any stillborn child in this state, the Bureau of Vital Statistics shall

issue a certificate of birth resulting in stillbirth upon the request of a parent named on the death certificate, within sixty (60) days of the date of the request. A parent may request the Bureau of Vital Statistics to issue a certificate of birth resulting in stillbirth without regard to whether the death occurred on, before, or after July 1, 2007, and without regard to the date on which the death certificate was issued.

(3) The person who is required to file a death certificate under this chapter shall advise the parent or parents of a stillborn child:

(a) That a parent may, but is not required to, request the preparation of a certificate of birth resulting in stillbirth;

(b) That a parent may obtain a certificate of birth resulting in stillbirth by contacting the Bureau of Vital Statistics to request the certificate and paying the required fee; and

(c) How a parent may contact the Bureau of Vital Statistics to request a certificate of birth resulting in stillbirth.

(4) A parent may provide a name for a stillborn child on the request for a certificate of birth resulting in stillbirth. The name of the stillborn child provided on or later added by amendment to the certificate shall be the same name as placed on the original or amended death certificate. If the requesting parent does not wish to provide a name, the Bureau of Vital Statistics shall fill in the certificate with the name "baby boy" or "baby girl" and the last name of the parent.

(5) Not later than September 1, 2007, the State Department of Health shall prescribe the form and content of a certificate of birth resulting in stillbirth and shall specify the information necessary to prepare the certificate. In addition to any other information required to be on the certificate, the certificate shall include:

(a) The date of the stillbirth;

(b) The county in which the stillbirth occurred;

(c) The state file number of the corresponding death certificate; and

(d) The following statement: "This certificate is not proof of live birth."

(6) Upon issuance of a certificate of birth resulting in stillbirth to a parent, the Bureau of Vital Statistics shall file an exact copy of the certificate with the local registrar of the registration district in which the stillbirth occurred. The local registrar shall file the certificate of birth resulting in stillbirth with the death certificate.

(7) The Bureau of Vital Statistics may not use a certificate of birth resulting in stillbirth to calculate live birth statistics.

(8) The State Board of Health may adopt any rules or regulations necessary to administer this section.

HISTORY:

Laws, 2007, ch. 514, § 20, eff from and after June 30, 2007.

Editor's Notes —

Laws of 2007, ch. 514, § 22 provides as follows:

"SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act." Laws of 2007, ch. 514 was approved on March 30, 2007.

MARRIAGES

Sec.
41-57-41. Repealed.
41-57-43. State registrar of vital statistics; safeguarding of records.
41-57-45. Repealed.
41-57-47. Certificates of registrar to be prima facie evidence.
41-57-48. Statistical record of marriage; completion; filing; recording fee.
41-57-49 through 41-57-55. Repealed.
41-57-57. Circuit clerks to compile data on marriages.
41-57-59. Penalty.

§ 41-57-41. Repealed.

Repealed by Laws, 1978, ch. 406, § 2, eff from and after January 1, 1979. [Laws, 1926, ch. 164; Laws, 1928, ch. 132]

Editor's Notes —

Former § 41-57-41 required all marriages occurring in Mississippi to be registered with the state registrar of vital statistics.

§ 41-57-43. State registrar of vital statistics; safeguarding of records.

It shall be the duty of the state registrar of vital statistics, in addition to the duties now required of him by law, to carry into effect the provisions of law relating to registration of marriages and the rules, regulations and orders of the State Board of Health which may be promulgated pursuant to Section 41-57-45. The said State Board of Health shall provide for such clerical and other assistance as may be necessary, and may fix the compensation of persons thus employed. The said board shall provide suitable apartments properly equipped with fireproof vault and filing cases for the permanent and safe preservation of all official records made and returned to said bureau.

HISTORY:

Codes, 1930, § 4934; 1942, § 7090; Laws, 1926, ch. 164; Laws, 1928, ch. 132.

Editor's Notes —

Section 41-57-45 referred to in this section was repealed by Laws of 1978, ch. 406, § 2, effective from and after January 1, 1979.

Laws of 1978, ch. 326, § 1, effective July 1, 1978, changed the title of the state registrar of vital statistics, referred to in this section, to be the state registrar of vital records. See § 41-57-3.

§ 41-57-45. Repealed.

Repealed by Laws, 1978, ch. 406, § 2, eff from and after January 1, 1979. [Laws, 1926, ch. 164; Laws, 1928, ch. 132]

Editor's Notes —

Former § 41-57-45 required the State Board of Health to formulate a plan for reporting and registering marriages.

§ 41-57-47. Certificates of registrar to be prima facie evidence.

Any copy of the records of marriages, when properly certified by the State Registrar of Vital Statistics to be a true copy thereof, shall be taken and received as prima facie evidence of the facts therein stated in all courts of this state. For any such certified copy, the applicant shall pay to the Bureau of Vital Statistics such fee for transactions as prescribed by the State Board of Health, which fees shall be paid into the State Treasury within sixty (60) days from the receipt thereof.

HISTORY:
Codes, 1930, § 4939; 1942, § 7094; Laws, 1926, ch. 164; Laws, 1928, ch. 132; Laws, 2001, ch. 418, § 1, eff from and after July 1, 2001.

Editor's Notes —
Laws of 1978, ch. 326, § 1, effective July 1, 1978, changed the title of the state registrar of vital statistics, referred to in this section, to be the state registrar of vital records. See § 41-57-3.

Cross References —
Furnishing free copies of records concerning veterans, see § 35-3-9.
Admissibility of birth and death certificates, see § 41-57-9.

RESEARCH REFERENCES

Am. Jur.
29A Am. Jur. 2d, Evidence § 1313.
52 Am. Jur. 2d, Marriage § 108.
7 Am. Jur. Proof of Facts, Marriage, Proof No. 1 (valid ceremonial marriage).
2 Am. Jur. Trials 409, Locating Public Records.

Practice References.
Young, Trial Handbook for Mississippi Lawyers §§ 19:19, 24:19.

CJS.
32A C.J.S., Evidence §§ 1098 et seq.
55 C.J.S., Marriage § 46.

§ 41-57-48. Statistical record of marriage; completion; filing; recording fee.

(1) For each marriage performed in this state, a record entitled "Statistical Record of Marriage" shall be filed with the office of vital records registration of the State Board of Health by the circuit clerk who issued the marriage license and shall be registered if it has been completed and filed in accordance with this section.

(2) The circuit clerk who issues the marriage license shall complete the statistical record (except for the section relating to the ceremony) on a form prescribed and furnished by the State Board of Health and shall sign it. The record shall be prepared on the basis of information obtained from the parties to be married, and both the bride and the groom shall sign the record certifying that the information about themselves is correct.

(3) The person who performs the marriage ceremony shall complete and sign the section relating to the ceremony and shall return the record to the circuit clerk who issued the license within five (5) days after the ceremony.

(4) The circuit clerk, on or before the tenth day of each calendar month, shall forward to the State Board of Health all completed records returned to him during the preceding month.

(5) The circuit clerk shall receive a recording fee of one dollar ($1.00) for each marriage record prepared and forwarded by him to the State Board of Health. This fee shall be collected from the applicants for the license together with, and in addition to, the fee for the license and shall be deposited in the county treasury. The recording fees shall be paid to the circuit clerk out of the county treasury once each six (6) months on order of the board of supervisors,

upon certification by the office of vital records registration of the number of marriage records filed.

HISTORY:

Laws, 1978, ch. 406, § 1, eff from and after January 1, 1979.

OPINIONS OF THE ATTORNEY GENERAL

A statistical record of marriage should be prepared for each license issued by the circuit clerks of the state of Mississippi, regardless of whether the ceremony of marriage is performed in the state of Mississippi, and the statistical record should be filed with the Mississippi State Department of Health. 2002 Miss. Op. Att'y Gen. 141.

RESEARCH REFERENCES

Am. Jur.

52 Am. Jur. 2d, Marriage § 37.

2 Am. Jur. Trials 409, Locating Public Records.

CJS.

55 C.J.S., Marriage § 33.

§§ 41-57-49 through 41-57-55. Repealed.

Repealed by Laws, 1978, ch. 406, § 2, eff from and after January 1, 1979.

§§ 41-57-49 through 41-57-53 [Laws, 1926, ch. 164; Laws, 1938, ch. 293; Laws, 1956, ch. 302]

§ 41-57-55. [Laws, 1926, ch. 164]

Editor's Notes —

Former § 41-57-49 authorized the state board of health to prepare and distribute a revised form containing a statistical record of a marriage and provided for the information to be recorded thereon.

Former § 41-57-51 related to the completion of the statistical record of marriage form.

Former § 41-57-53 dealt with the duty of the circuit court clerk with respect to forwarding monthly to the state board of health completed statistical record of marriage forms and lists of marriage licenses issued.

Former § 41-57-55 fixed the fee of the circuit court clerk for forwarding to the State Board of Health completed statistical record of marriage forms and lists of marriage licenses issued, and provided for the payment thereof.

§ 41-57-57. Circuit clerks to compile data on marriages.

In order to secure records of marriages and births in the several counties in this state from the earliest records down to the present time, the State Board of Health is hereby authorized and empowered to make contract with the circuit clerks or others of this state to compile for the bureau of vital statistics complete lists of marriages in the various counties from the earliest records down to the present time. In order to complete these records by securing records of said marriages in all said counties, the State Board of Health is hereby authorized and empowered to deposit all moneys received as fees for certified copies of births, deaths and marriages in the state treasury in a separate account to be used for the completion of the vital statistics on marriages in the various counties, and for clerical expenses and other expenses necessary for completion and issuance of birth records. Said fund shall be paid out for said purposes only on voucher issued for these purposes by the State

Board of Health. When said statistics of past marriages in the several counties shall have been completed and paid for, then all of said funds that may remain on hand and all other such funds collected for certified copies of birth, death and marriage records thereafter may be used for the completion of birth records.

HISTORY:
Codes, 1930, § 4940; 1942, § 7095; Laws, 1926, ch. 164; Laws, 1928, ch. 132; Laws, 1942, ch. 317.

§ 41-57-59. Penalty.

Any person or persons who shall violate any of the provisions of Sections 41-57-41 through 41-57-57, or any rule, regulation or order of the state board of health relative to the making of said reports, as to reporting, recording or filing the information for the bureau of vital statistics on marriages, or who shall fail, neglect or refuse to perform any of the duties imposed by said order, rules or regulations, or shall furnish false information for the purpose of making incorrect records for said bureau, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than Five Hundred Dollars ($500.00) or be imprisoned in the county jail not exceeding six (6) months, or shall suffer both such fine and imprisonment, at the discretion of said court.

HISTORY:
Codes, 1930, § 4941; 1942, § 7096; Laws, 1926, ch. 164; Laws, 1928, ch. 132; Laws, 1983, ch. 522, § 36, eff from and after July 1, 1983.

Editor's Notes —
Section 41-57-41 referred to in this section was repealed by Laws of 1978, ch. 406, § 2, effective from and after January 1, 1979.

Cross References —
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 58.

MEDICAL RADIATION TECHNOLOGY

Sec.

41-58-1.	Definitions [Repealed effective July 1, 2023].
41-58-3.	Adoption, etc., of rules and regulations; requirements for operation of medical radiation technology machines; maintenance of records by facilities; continuing education requirements for operators; registration requirements [Repealed effective July 1, 2020; Repealed effective July 1, 2023; See Editor's note].
41-58-5.	Continuing education requirements; completion; fees [Repealed effective July 1, 2023].
41-58-7.	State Board of Medical Licensure authorized to license and regulate practice of radiologist assistants; radiologists authorized to use services of radiologist assistants to practice radiology assistance under their supervision; board shall promulgate rules and regulations including qualifications for licensure, scope of practice, discipline, and fees; requirements for licensure; radiologist assistants prohibited from interpreting images, making diagnoses, or prescribing medications or therapies.
41-58-9.	Department of Health to adopt regulations specifying information to be provided patients receiving mammogram services.

§ 41-58-1. Definitions [Repealed effective July 1, 2023].

As used in this chapter:

(a) "Department" means the Mississippi State Department of Health.

(b) "Licensed practitioner" means a person licensed or otherwise authorized by law to practice medicine, dentistry, chiropractic, osteopathy or podiatry, or a licensed nurse practitioner or physician assistant.

(c) "Ionizing radiation" means x-rays and gamma rays, alpha and beta particles, high-speed electrons, neutrons and other nuclear particles.

(d) "X-radiation" means penetrating electromagnetic radiation with wavelengths shorter than ten (10) nanometers produced by bombarding a metallic target with fast electrons in a vacuum.

(e) "Supervision" means responsibility for, and control of, quality radiation safety and protection, and technical aspects of the application of ionizing radiation to human beings for diagnostic and/or therapeutic purposes.

(f) "Medical radiation technology" means the science and art of applying ionizing radiation to human beings for diagnostic and/or therapeutic purposes. The four (4) specialized disciplines of medical radiation technology are diagnostic radiologic technology, nuclear medicine technology, radiation therapy and limited x-ray machine operator.

(g) "Radiologic technologist" means a person other than a licensed practitioner who has passed a national certification examination recognized by the department such as the American Registry of Radiologic Technologists examination or its equivalent, who applies x-radiation or ionizing radiation to any part of the human body for diagnostic purposes and includes the administration of parenteral and enteral contrast media and administration of other medications or procedures incidental to radiologic examinations.

(h) "Nuclear medicine technologist" means a person other than a licensed practitioner who has passed a national certification examination recognized by the department such as the American Registry of Radiologic Technologists examination or the Nuclear Medicine Technology Certification Board examination or its equivalent, who performs in vivo imaging and measurement procedures and in vitro nonimaging laboratory studies, prepares radiopharmaceuticals, and administers diagnostic/therapeutic doses of radiopharmaceuticals and administers other medications or procedures incidental for nuclear medicine exams to human beings while under the supervision of a licensed practitioner who is licensed to possess and use radioactive material. A certified nuclear medicine technologist also may perform diagnostic CT exams on hybrid equipment for diagnostic purposes, including the administration of parenteral and enteral contrast media and administration of other medications or procedures incidental to CT exams. Certified nuclear medicine technologists who perform CT scans must be certified in CT by the American Registry of Radiologic Technologists, the Nuclear Medicine Technology Certification Board, or other CT certifying body. A certified nuclear medicine technologist may do on-the-job training on hybrid equipment provided that the certified nuclear medicine technologist is supervised by a certified technologist and obtains a CT certification within six (6) months of that training.

(i) "Radiation therapist" means a person other than a licensed practitioner who has passed a national certification examination recognized by the department such as the American Registry of Radiologic Technologists examination or its equivalent, who applies x-radiation and the ionizing radiation emitted from particle accelerators, cobalt sixty (60) units and sealed sources of radioactive material to human beings for therapeutic purposes while under the supervision of a licensed radiation oncologist or a board-certified radiologist who is licensed to possess and use radioactive material.

(j) "Limited x-ray machine operator" means a person other than a licensed practitioner or radiologic technologist who is issued a permit by the State Board of Medical Licensure to perform medical radiation technology limited to specific radiographic procedures on certain parts of the human anatomy, specifically the chest, abdomen and skeletal structures, and excluding fluoroscopic, both stationary and mobile (C-arm), and contrast studies, computed tomography, nuclear medicine, radiation therapy studies and mammography.

(k) "Council" means the Medical Radiation Advisory Council created under Section 41-58-3.

This section shall stand repealed on July 1, 2023.

HISTORY:

Laws, 1995, ch. 388, § 1; Laws, 1996, ch. 546, § 1; Laws, 2000, ch. 333, § 1; Laws, 2006, ch. 324, § 1; Laws, 2010, ch. 478, § 1; Laws, 2013, ch. 434, § 1; Laws, 2015, ch. 317, § 1; Laws, 2015, ch. 459, § 1, eff from and after July 1, 2015; Laws, 2018, ch. 321, § 1, eff from and after July 1, 2018.

Joint Legislative Committee Note —

Section 1 of ch. 317, Laws of 2015, effective July 1, 2015 (approved March 13, 2015), amended this section. Section 1 of ch. 459, Laws of 2015, effective July 1, 2015 (approved April 20, 2015), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 459, Laws of 2015, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes —

The 2018 amendment extended the date of the repealer for the section by substituting "July 1, 2023" for "July 1, 2018" in the last paragraph.

§ 41-58-3. Adoption, etc., of rules and regulations; requirements for operation of medical radiation technology machines; maintenance of records by facilities; continuing education requirements for operators; registration requirements [Repealed effective July 1, 2020; Repealed effective July 1, 2023; See Editor's note].

(1) The department shall have full authority to adopt such rules and regulations not inconsistent with the laws of this state as may be necessary to effectuate the provisions of this chapter, and may amend or repeal the same as may be necessary for such purposes.

(2) There shall be established a Medical Radiation Advisory Council to be appointed as provided in this section. The council shall consist of nine (9) members as follows:

(a) One (1) radiologist who is an active practitioner and member of the Mississippi Radiological Society;

(b) One (1) licensed family physician;

(c) One (1) licensed practitioner;

(d) Two (2) registered radiologic technologists;

(e) One (1) nuclear medicine technologist;

(f) One (1) radiation therapist;

(g) One (1) radiation physicist;

(h) One (1) hospital administrator; and

(i) The State Health Officer, or his designee, who shall serve as ex officio chairman with no voting authority.

(3) The department shall, following the recommendations from the appropriate professional state societies and organizations, including the Mississippi Radiological Society, the Mississippi Society of Radiologic Technologists, and the Mississippi State Nuclear Medicine Society, and other nominations that may be received from whatever source, appoint the members of the council as soon as possible after the effective date of subsection (2) of this section and this subsection (3). Any person serving on the council who is a practitioner of a profession or occupation required to be licensed, credentialed or certified in the state shall be a holder of an appropriate license, credential or certificate issued by the state. All members of the council shall be residents of the State of Mississippi. The council shall promulgate such rules and regulations by which it shall conduct its business. Members of the council shall receive no salary for services performed on the council but may be reimbursed for their reasonable and necessary actual expenses incurred in the performance of the same, from funds provided for such purpose. The council shall assist and advise the

department in the development of regulations and standards to effectuate the provisions of this chapter.

(4) A radiologic technologist, nuclear medicine technologist or radiation therapist shall not apply ionizing or x-radiation or administer radiopharmaceuticals to a human being or otherwise engage in the practice of medical radiation technology unless the person possesses a valid registration issued by the department under the provisions of this chapter.

(5) The department may issue a temporary registration to practice a specialty of medical radiation technology to any applicant who has completed an approved program, who has complied with the provisions of this chapter, and is awaiting examination for that specialty. This registration shall convey the same rights as the registration for which the applicant is awaiting examination and shall be valid for one (1) six-month period.

(6) The department may charge a registration fee of not more than Fifty Dollars ($50.00) biennially to each person to whom it issues a registration under the provisions of this chapter. Any increase in the fee charged by the department under this subsection shall be in accordance with the provisions of Section 41-3-65.

(7) Registration with the department is not required for:

(a) A student enrolled in and participating in an accredited course of study approved by the department for diagnostic radiologic technology, nuclear medicine technology or radiation therapy, who as a part of his clinical course of study applies ionizing radiation to a human being while under the supervision of a licensed practitioner, registered radiologic technologist, registered nuclear medicine technologist or registered radiation therapist;

(b) Laboratory personnel who use radiopharmaceuticals for in vitro studies;

(c) A dental hygienist or a dental assistant who is not a radiologic technologist, nuclear medicine technologist or radiation therapist, who possesses a radiology permit issued by the Board of Dental Examiners and applies ionizing radiation under the specific direction of a licensed dentist;

(d) A chiropractic assistant who is not a radiologic technologist, nuclear medicine technologist or radiation therapist, who possesses a radiology permit issued by the Board of Chiropractic Examiners and applies ionizing radiation under the specific direction of a licensed chiropractor;

(e) An individual who is permitted as a limited x-ray machine operator by the State Board of Medical Licensure and applies ionizing radiation in a physician's office, radiology clinic or a licensed hospital in Mississippi under the specific direction of a licensed practitioner; and

(f) A student enrolled in and participating in an accredited course of study for diagnostic radiologic technology, nuclear medicine technology or radiation therapy and is employed by a physician's office, radiology clinic or a licensed hospital in Mississippi and applies ionizing radiation under the specific direction of a licensed practitioner.

(8) Nothing in this chapter is intended to limit, preclude, or otherwise interfere with the practices of a licensed practitioner who is duly licensed or

registered by the appropriate agency of the State of Mississippi, provided that the agency specifically recognizes that the procedures covered by this chapter are within the scope of practice of the licensee or registrant.

(9)(a) If any radiologic technologist, nuclear medicine technologist or radiation therapist violates any provision of this chapter or the regulations adopted by the department, the department shall suspend or revoke the registration and practice privileges of the person or issue other disciplinary actions in accordance with statutory procedures and rules and regulations of the department.

(b) If any person violates any provision of this chapter, the department shall issue a written warning to the licensed practitioner or medical institution that employs the person; and if that person violates any provision of this chapter again within three (3) years after the first violation, the department may suspend or revoke the permit or registration for the x-radiation and ionizing equipment of the licensed practitioner or medical institution that employs the person, in accordance with statutory procedures and rules and regulations of the department regarding suspension and revocation of those permits or registrations.

(10) This section shall stand repealed on July 1, 2023.

HISTORY:

Laws, 1995, ch. 388, § 2; Laws, 1996, ch. 546, § 2; Laws, 2000, ch. 333, § 2; Laws, 2006, ch. 324, § 2; Laws, 2010, ch. 478, § 2; Laws, 2013, ch. 434, § 2; Laws, 2015, ch. 317, § 2; Laws, 2015, ch. 459, § 2; Laws, 2016, ch. 510, § 8, eff from and after July 1, 2016; Laws, 2018, ch. 321, § 2, eff from and after July 1, 2018.

Joint Legislative Committee Note —

Section 2 of ch. 317, Laws of 2015, effective July 1, 2015 (approved March 13, 2015), amended this section. Section 2 of ch. 459, Laws of 2015, effective July 1, 2015 (approved April 20, 2015), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 459, Laws of 2015, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Notes —

Pursuant to Laws, 1996, ch. 546, § 4, subsections (2) and (3) of this section became effective from and after passage (approved April 13, 1996); the remainder of the act became effective from and after July 1, 1996.

This section was amended by § 8 of Chapter 510, Laws of 2016, and was subject to the repealer contained in § 65 of that act, effective July 1, 2020. The section is also repealed by its own terms, as set out in subsection (10) of the section, effective July 1, 2023. The section is subject to both repealers.

Laws of 2016, ch. 510, § 65 provides:

"SECTION 65. This act shall stand repealed on July 1, 2020."

Amendment Notes —

The 2018 amendment extended the date of the repealer for the section by substituting "July 1, 2023" for "July 1, 2018" in (10).

Cross References —

Authority of State Board of Chiropractic Examiners to certify chiropractic assistants exempt from registration under this section, see § 73-6-5.

§ 41-58-5. Continuing education requirements; completion; fees [Repealed effective July 1, 2023].

(1) Each registered radiologic technologist, registered nuclear medicine technologist and registered radiation therapist shall submit evidence to the

department of completing twenty-four (24) hours of continuing education in a two-year period as described in the rules and regulations of the department.

(2) Each limited x-ray machine operator who is first employed to apply ionizing radiation in the State of Mississippi shall complete twelve (12) hours of education in radiologic technology, with six (6) of those hours specifically in radiation protection, not later than twelve (12) months after the date of his or her employment to apply ionizing radiation, and shall thereafter submit evidence to the State Board of Medical Licensure of completing twelve (12) hours of continuing education in a two-year period as described in the rules and regulations of the State Board of Medical Licensure. Six (6) of the continuing education hours must be in radiation protection.

(3) Each individual who is exempt from registration under paragraph (d) of Section 41-58-3(7) shall complete twelve (12) hours of continuing education in a two-year period as described in the rules and regulations of the department. Six (6) of the continuing education hours must be in radiation protection.

(4) Each individual who is exempt from registration under paragraph (d) of Section 41-58-3(7) and who is first employed to apply ionizing radiation in the State of Mississippi shall complete twelve (12) hours of education in radiologic technology, with six (6) of those hours specifically in radiation protection, not later than twelve (12) months after the date of his or her employment to apply ionizing radiation.

(5) The department shall approve training sessions that will provide the continuing education required under this section in each of the junior/community college districts in the state, with at least one (1) training session being held during each quarter of the year.

(6) The Board of Chiropractic Examiners and the State Board of Medical Licensure may charge a fee of not more than Fifty Dollars ($50.00) biennially to each individual whom the board certifies as having completed the continuing education requirements of this section.

(7) This section shall stand repealed on July 1, 2023.

HISTORY:

Laws, 1996, ch. 546, § 3; Laws, 1997, ch. 541, § 36; Laws, 2000, ch. 333, § 3; Laws, 2006, ch. 324, § 3; Laws, 2010, ch. 478, § 3; Laws, 2013, ch. 434, § 3; Laws, 2015, ch. 317, § 3; Laws, 2015, ch. 459, § 3, eff from and after July 1, 2015; Laws, 2018, ch. 321, § 3, eff from and after July 1, 2018.

Joint Legislative Committee Note —

Section 3 of ch. 317, Laws of 2015, effective July 1, 2015 (approved March 13, 2015), amended this section. Section 3 of ch. 459, Laws of 2015, effective July 1, 2015 (approved April 20, 2015), also amended this section. As set out above, this section reflects the language of Section 3 of ch. 459, Laws of 2015, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes —

The 2018 amendment extended the date of the repealer for the section by substituting "July 1, 2023" for "July 1, 2018" in (7).

Cross References —

Authority of State Board of Chiropractic Examiners to establish continuing education requirements for chiropractic assistants, see § 73-6-5.

§ 41-58-7. State Board of Medical Licensure authorized to license and regulate practice of radiologist assistants; radiologists authorized to use services of radiologist assistants to practice radiology assistance under their supervision; board shall promulgate rules and regulations including qualifications for licensure, scope of practice, discipline, and fees; requirements for licensure; radiologist assistants prohibited from interpreting images, making diagnoses, or prescribing medications or therapies.

(1) The State Board of Medical Licensure shall license and regulate the practice of radiologist assistants in accordance with the provisions of this section.

(2) A radiologist may use the services of a radiologist assistant to practice radiology assistance under the supervision of the radiologist, provided that the radiologist assistant is duly qualified and licensed as provided in this section.

(3) The board shall promulgate and publish reasonable rules and regulations necessary to enable it to discharge its functions and enforce the provisions of law regulating the practice of radiologist assistants. Those rules and regulations shall include, but are not limited to: qualifications for licensure for radiologist assistants; scope of practice of radiologist assistants; supervision of radiologist assistants; identification of radiologist assistants; grounds for disciplinary actions and discipline of radiologist assistants; and setting and charging reasonable fees for licensure and license renewals for radiologist assistants.

(4) Those rules and regulations adopted by the board pertaining to the scope of practice and the educational qualifications necessary to practice as a radiologist assistant shall be consistent with guidelines adopted by the American College of Radiology, the American Society of Radiologic Technologists, and the American Registry of Radiologic Technologists.

(5) Applicants for licensure as a radiologist assistant must be: (a) credentialed to provide radiology services under the supervision of a radiologist; (b) a radiologic technologist registered under Sections 41-58-1 through 41-58-5; and (c) certified and registered with the American Registry of Radiologic Technologists.

(6) A radiologist assistant may not interpret images, make diagnoses or prescribe medications or therapies.

HISTORY:
Laws, 2005, ch. 317, § 1; Laws, 2006, ch. 342, § 1, eff from and after passage (approved Mar. 13, 2006).

§ 41-58-9. Department of Health to adopt regulations specifying information to be provided patients receiving mammogram services.

(1) As used in this section, the following terms shall be defined as provided in this subsection:

(a) "Department" means the State Department of Health.

(b) "Mammography" means radiography of the breast for the purpose of enabling a physician to determine the presence, size, location and extent of cancerous or potentially cancerous tissue in the breast.

(c) "Radiography" means the making of a film or other record of an internal structure of the body by passing x-rays or gamma rays through the body to act on film or other image receptor.

(2) The department shall adopt regulations that specify the information to be provided to patients receiving mammogram services in the written report of the mammography results that is furnished by the entity performing the mammography services directly to patients under the federal Mammography Quality Standards Act, 42 USC Section 263b. Any information that the department requires to be provided in the report shall be evidence-based, consistent with accepted medical standards, and not inconsistent with the federal Mammography Quality Standards Act or regulations promulgated under that act.

HISTORY:

Laws, 2017, ch. 388, § 1, eff from and after July 1, 2017.

Federal Aspects—

Mammography Quality Standards Act, see 42 USCS § 263b.

CHAPTER 59.

EMERGENCY MEDICAL SERVICES

General Provisions. 41-59-1
EMS Personnel Licensure Interstate Compact. 41-59-101

GENERAL PROVISIONS

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41-59-81.	Promulgation of rules and regulations governing first responder basic life support.
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41-59-85.	Requirements for ambulances and special use medical service vehicles operating in emergency mode.

§ 41-59-1. Title.

This chapter shall be cited as the "Emergency Medical Services Act of 1974."

HISTORY:

Laws, 1974, ch. 507, § 1, eff from and after passage (approved April 3, 1974).

Cross References —

Public ambulance service law, see §§ 41-55-1 et seq.

Advanced life support personnel and services, see §§ 41-60-11, 41-60-13.

§ 41-59-3. Definitions.

As used in this chapter, unless the context otherwise requires, the term:

(a) "Ambulance" means any privately or publicly owned land or air vehicle that is especially designed, constructed, modified or equipped to be used, maintained and operated upon the streets, highways or airways of this state to assist persons who are sick, injured, wounded, or otherwise incapacitated or helpless;

(b) "Permit" means an authorization issued for an ambulance vehicle and/or a special use EMS vehicle as meeting the standards adopted under this chapter;

(c) "License" means an authorization to any person, firm, corporation, or governmental division or agency to provide ambulance services in the State of Mississippi;

(d) "Emergency medical technician" means an individual who possesses a valid emergency medical technician's certificate issued under the provisions of this chapter or who has a privilege to practice under the Emergency Medical Services Personnel Licensure Interstate Compact;

(e) "Certificate" means official acknowledgment that an individual has successfully completed (i) the recommended basic emergency medical technician training course referred to in this chapter which entitles that individual to perform the functions and duties of an emergency medical technician, or (ii) the recommended medical first responder training course referred to in this chapter which entitles that individual to perform the functions and duties of a medical first responder;

(f) "Board" means the State Board of Health;

(g) "Department" means the State Department of Health, Division of Emergency Medical Services;

(h) "Executive officer" means the Executive Officer of the State Board of Health, or his designated representative;

(i) "First responder" means a person who uses a limited amount of equipment to perform the initial assessment of and intervention with sick, wounded or otherwise incapacitated persons;

(j) "Medical first responder" means a person who uses a limited amount of equipment to perform the initial assessment of and intervention with sick, wounded or otherwise incapacitated persons who (i) is trained to assist other EMS personnel by successfully completing, and remaining current in refresher training in accordance with, an approved "First Responder: National Standard Curriculum" training program, as developed and promulgated by the United States Department of Transportation; (ii) is nationally registered as a first responder by the National Registry of Emergency Medical Technicians; and (iii) is certified as a medical first responder by the State Department of Health, Division of Emergency Medical Services;

(k) "Invalid vehicle" means any privately or publicly owned land or air vehicle that is maintained, operated and used only to transport persons routinely who are convalescent or otherwise nonambulatory and do not require the service of an emergency medical technician while in transit;

(*l*) "Special use EMS vehicle" means any privately or publicly owned land, water or air emergency vehicle used to support the provision of emergency medical services. These vehicles shall not be used routinely to transport patients;

(m) "Trauma care system" or "trauma system" means a formally organized arrangement of health care resources that has been designated by the department by which major trauma victims are triaged, transported to and treated at trauma care facilities;

(n) "Trauma care facility" or "trauma center" means a hospital located in the State of Mississippi or a Level I trauma care facility or center located in a state contiguous to the State of Mississippi that has been designated by the department to perform specified trauma care services within a trauma care system pursuant to standards adopted by the department;

(o) "Trauma registry" means a collection of data on patients who receive hospital care for certain types of injuries. Such data are primarily designed to ensure quality trauma care and outcomes in individual institutions and trauma systems, but have the secondary purpose of providing useful data for the surveillance of injury morbidity and mortality;

(p) "Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, psychiatric disturbances and/or symptoms of substance abuse, such that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part;

(q) "Emergency medical call" means a situation that is presumptively classified at time of dispatch to have a high index of probability that an emergency medical condition or other situation exists that requires medical intervention as soon as possible to reduce the seriousness of the situation, or when the exact circumstances are unknown, but the nature of the request is suggestive of a true emergency where a patient may be at risk;

(r) "Emergency response" means responding immediately at the basic life support or advanced life support level of service to an emergency medical call. An immediate response is one in which the ambulance supplier begins as quickly as possible to take the steps necessary to respond to the call;

(s) "Emergency mode" means an ambulance or special use EMS vehicle operating with emergency lights and warning siren (or warning siren and air horn) while engaged in an emergency medical call.

HISTORY:

Laws, 1974, ch. 507, § 2; Laws, 1991, ch. 482, § 1; Laws, 1998, ch. 429, § 1; Laws, 2000, ch. 594, § 1; Laws, 2002, ch. 623, § 1; brought forward without change, Laws, 2002, 1st Ex Sess, ch. 3, § 1; Laws, 2004, ch. 425, § 1; Laws, 2004, ch. 581, § 1; Laws, 2008, ch. 549, § 1; reenacted and amended, Laws, 2011, ch. 545, § 2; Laws, 2017, ch. 371, § 3, eff from and after July 1, 2017.

Joint Legislative Committee Note —

Section 1 of ch. 425 Laws of 2004, effective from and after July 1, 2004 (approved April 27, 2004), amended this section. Section 1 of ch. 581, Laws of 2004, effective from and after July 1, 2004 (approved May 27, 2004), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 581, Laws of 2004, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (d), as amended by Chapter 371, Laws of 2017, by substituting "Emergency Medical Services Personnel Licensure Interstate Compact" for "Recognition of Emergency Medical Services Personnel Licensure Interstate Compact." The Joint Committee ratified the correction at the August 15, 2017, meeting of the Committee.

Editor's Notes —

Laws of 2002, ch. 623, § 5, as amended by Laws, 2002, 1st Ex Sess, ch. 3, § 5, provides as follows:

"SECTION 5. This act shall take effect and be in force from and after July 1, 2004."

Laws of 2011, ch. 545, § 8, effective July 1, 2011, amended Laws of 2008, ch. 549, § 9, to extend the date of the repealer for this section from July 1, 2011, until July 1, 2014. Subsequently, Laws of 2011, ch. 531, § 2, effective July 2, 2011, repealed Laws of 2008, ch. 549, § 9, to delete the repealer for this section.

Amendment Notes —

The 2017 amendment added "or who has a privilege…Licensure Interstate Compact" at the end of (d).

Cross References —

EMS Personnel Licensure Interstate Compact, see § 41-59-101.

OPINIONS OF THE ATTORNEY GENERAL

Medical information contained in "run reports" from City EMS units which contain name of person treated, address of response, physical data, summary of any medical treatment or other action taken in response to run and other pertinent information, is confidential other information in reports is public. 1993 Miss. Op. Att'y Gen. 592.

It is within the discretion of the Department of Health to determine the type of organizational structure that will best meet the intent of the legislature to "reduce death and disability resulting from traumatic injury" through the establishment of a uniform nonfragmented inclusive statewide trauma care system that provides excellent patient care. 1999 Miss. Op. Att'y Gen. 195.

§ 41-59-5. Establishment and administration of program.

(1) The State Board of Health shall establish and maintain a program for

the improvement and regulation of emergency medical services (hereinafter EMS) in the State of Mississippi. The responsibility for implementation and conduct of this program shall be vested in the State Health Officer of the State Board of Health along with such other officers and boards as may be specified by law or regulation.

(2) The board shall provide for the regulation and licensing of public and private ambulance service, inspection and issuance of permits for ambulance vehicles, training and certification of EMS personnel, including drivers and attendants, the development and maintenance of a statewide EMS records program, development and adoption of EMS regulations, the coordination of an EMS communications system, and other related EMS activities.

(3) The board is authorized to promulgate and enforce such rules, regulations and minimum standards as needed to carry out the provisions of this chapter.

(4) The board is authorized to receive any funds appropriated to the board from the Emergency Medical Services Operating Fund created in Section 41-59-61 and is further authorized, with the Emergency Medical Services Advisory Council acting in an advisory capacity, to administer the disbursement of such funds to the counties, municipalities and organized emergency medical service districts and the utilization of such funds by the same, as provided in Section 41-59-61.

(5) The department acting as the lead agency, in consultation with and having solicited advice from the EMS Advisory Council, shall develop a uniform nonfragmented inclusive statewide trauma care system that provides excellent patient care. It is the intent of the Legislature that the purpose of this system is to reduce death and disability resulting from traumatic injury, and in order to accomplish this goal it is necessary to assign additional responsibilities to the department. The department is assigned the responsibility for creating, implementing and managing the statewide trauma care system. The department shall be designated as the lead agency for trauma care systems development. The department shall develop and administer trauma regulations that include, but are not limited to, the Mississippi Trauma Care System Plan, trauma system standards, trauma center designations, field triage, interfacility trauma transfer, EMS aero medical transportation, trauma data collection, trauma care system evaluation and management of state trauma systems funding. The department shall promulgate regulations specifying the methods and procedures by which Mississippi-licensed acute care facilities shall participate in the statewide trauma system. Those regulations shall include mechanisms for determining the appropriate level of participation for each facility or class of facilities. The department shall also adopt a schedule of fees to be assessed for facilities that choose not to participate in the statewide trauma care system, or which participate at a level lower than the level at which they are capable of participating. The fees paid under this provision shall be for the exclusive benefit of the statewide trauma care system and shall not lapse into the State General Fund. The department shall promulgate rules and regulations necessary to effectuate this provision by

September 1, 2008, with an implementation date of September 1, 2008. The department shall take the necessary steps to develop, adopt and implement the Mississippi Trauma Care System Plan and all associated trauma care system regulations necessary to implement the Mississippi trauma care system. The department shall cause the implementation of both professional and lay trauma education programs. These trauma educational programs shall include both clinical trauma education and injury prevention. As it is recognized that rehabilitation services are essential for traumatized individuals to be returned to active, productive lives, the department shall coordinate the development of the inclusive trauma system with the Mississippi Department of Rehabilitation Services and all other appropriate rehabilitation systems.

(6) The State Board of Health is authorized to receive any funds appropriated to the board from the Mississippi Trauma Care System Fund created in Section 41-59-75. It is further authorized, with the Emergency Medical Services Advisory Council and the Mississippi Trauma Advisory Committee acting in advisory capacities, to administer the disbursements of those funds according to adopted trauma care system regulations. Any Level I trauma care facility or center located in a state contiguous to the State of Mississippi that participates in the Mississippi trauma care system and has been designated by the department to perform specified trauma care services within the trauma care system under standards adopted by the department shall receive a reasonable amount of reimbursement from the department for the cost of providing trauma care services to Mississippi residents whose treatment is uncompensated.

(7) In addition to the trauma-related duties provided for in this section, the Board of Health shall develop a plan for the delivery of services to Mississippi burn victims through the existing trauma care system of hospitals. Such plan shall be operational by July 1, 2005, and shall include:

(a) Systems by which burn patients will be assigned or transferred to hospitals capable of meeting their needs;

(b) Until the Mississippi Burn Center established at the University of Mississippi Medical Center under Section 37-115-45 is operational, procedures for allocating funds appropriated from the Mississippi Burn Care Fund to hospitals that provide services to Mississippi burn victims; and

(c) Such other provisions necessary to provide burn care for Mississippi residents, including reimbursement for travel, lodging, if no free lodging is available, meals and other reasonable travel-related expenses incurred by burn victims, family members and/or caregivers, as established by the State Board of Health through rules and regulations.

After the Mississippi Burn Center established at the University of Mississippi Medical Center under Section 37-115-45 is operational, the Board of Health shall revise the plan to include the Mississippi Burn Center.

HISTORY:

Laws, 1974, ch. 507, § 3; Laws, 1982, ch. 344, § 2; Laws, 1989, ch. 545, § 1; Laws, 1991, ch. 597, § 1; Laws, 1992, ch. 491 § 27; Laws, 1998, ch. 429, § 2; Laws, 2005, 2nd Ex Sess, ch. 47, § 8; Laws, 2007, ch. 569, § 8; Laws, 2008, ch. 549, § 2; reenacted and amended, Laws, 2011, ch. 545, § 3, eff from and after July 1, 2011.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the paragraph (7)(b). The phrase "Section 1 of this act" was changed to "Section 37-115-45". The Joint Committee ratified the correction at its July 13, 2009 meeting.

Editor's Notes —

Laws of 2011, ch. 545, § 8, effective July 1, 2011, amended Laws of 2008, ch. 549, § 9, to extend the date of the repealer for this section from July 1, 2011, until July 1, 2014. Subsequently, Laws of 2011, ch. 531, § 2, effective July 2, 2011, repealed Laws of 2008, ch. 549, § 9, to delete the repealer for this section.

Cross References —

Mississippi Burn Center, see § 37-115-45.

General powers and duties of state board of health, see § 41-3-15.

Powers and duties of the state board of health and the EMS director to administer disbursements from the emergency medical services operating fund, see § 41-59-61.

JUDICIAL DECISIONS

1. Standard of care.

In a medical malpractice case, the trial court found a thoracic surgeon's testimony more persuasive than a semi-retired general surgeon's testimony and, therefore, found that a regional medical center was in compliance with the trauma care system regulations in July 2003 and met the applicable standard of care. As the thoracic surgeon's testimony was credible and reasonable, the trial judge's findings and judgment in favor of the medical center was upheld. Taylor v. Delta Reg'l Med. Ctr., 186 So. 3d 384, 2016 Miss. App. LEXIS 81 (Miss. Ct. App. 2016).

OPINIONS OF THE ATTORNEY GENERAL

It is within the discretion of the Department of Health to determine the type of organizational structure that will best meet the intent of the legislature to "reduce death and disability resulting from traumatic injury" through the establishment of a uniform nonfragmented inclusive statewide trauma care system that provides excellent patient care. 1999 Miss. Op. Att'y Gen. 195.

§ 41-59-7. Advisory council.

(1) There is created an emergency medical services advisory council to consist of the following members who shall be appointed by the Governor:

(a) One (1) licensed physician to be appointed from a list of nominees presented by the Mississippi Trauma Committee, American College of Surgeons;

(b) One (1) licensed physician to be appointed from a list of nominees who are actively engaged in rendering emergency medical services presented by the Mississippi State Medical Association;

(c) One (1) registered nurse whose employer renders emergency medical services, to be appointed from a list of nominees presented by the Mississippi Nurses Association;

(d) Two (2) hospital administrators who are employees of hospitals which provide emergency medical services, to be appointed from a list of nominees presented by the Mississippi Hospital Association;

(e) Two (2) operators of ambulance services;

(f) Three (3) officials of county or municipal government;

(g) One (1) licensed physician to be appointed from a list of nominees presented by the Mississippi Chapter of the American College of Emergency Physicians;

(h) One (1) representative from each designated trauma care region, to be appointed from a list of nominees submitted by each region;

(i) One (1) registered nurse to be appointed from a list of nominees submitted by the Mississippi Emergency Nurses Association;

(j) One (1) EMT-Paramedic whose employer renders emergency medical services in a designated trauma care region;

(k) One (1) representative from the Mississippi Department of Rehabilitation Services;

(*l*) One (1) member who shall be a person who has been a recipient of trauma care in Mississippi or who has an immediate family member who has been a recipient of trauma care in Mississippi;

(m) One (1) licensed neurosurgeon to be appointed from a list of nominees presented by the Mississippi State Medical Association;

(n) One (1) licensed physician with certification or experience in trauma care to be appointed from a list of nominees presented by the Mississippi Medical and Surgical Association;

(o) One (1) representative from the Mississippi Firefighters Memorial Burn Association, to be appointed by the association's governing body; and

(p) One (1) representative from the Mississippians for Emergency Medical Services, to be appointed by the association's governing body.

The terms of the advisory council members shall begin on July 1, 1974. Four (4) members shall be appointed for a term of two (2) years, three (3) members shall be appointed for a term of three (3) years, and three (3) members shall be appointed for a term of four (4) years. Thereafter, members shall be appointed for a term of four (4) years. The executive officer or his designated representative shall serve as ex officio chairman of the advisory council. Advisory council members may hold over and shall continue to serve until a replacement is named by the Governor.

The advisory council shall meet at the call of the chairman at least annually. For attendance at such meetings, the members of the advisory council shall be reimbursed for their actual and necessary expenses including food, lodging and mileage as authorized by law, and they shall be paid per diem compensation authorized under Section 25-3-69.

The advisory council shall advise and make recommendations to the board regarding rules and regulations promulgated pursuant to this chapter.

(2) There is created a committee of the Emergency Medical Services Advisory Council to be named the Mississippi Trauma Advisory Committee (hereinafter "MTAC"). This committee shall act as the advisory body for trauma care system development and provide technical support to the department in all areas of trauma care system design, trauma standards, data collection and evaluation, continuous quality improvement, trauma care system funding, and evaluation of the trauma care system and trauma care programs. The membership of the Mississippi Trauma Advisory Committee shall be comprised of Emergency Medical Services Advisory Council members appointed by the chairman.

HISTORY:

Laws, 1974, ch. 507, § 4; Laws, 1983, ch. 522, § 37; Laws, 1986, ch. 363; Laws, 1998, ch. 429, § 3; Laws, 2008, ch. 325, § 1; Laws, 2008, ch. 549, § 3, eff from and after July 1, 2008; reenacted and amended, Laws, 2011, ch. 545, § 4, eff from and after July 1, 2011.

Joint Legislative Committee Note —

Section 1 of ch. 325, Laws of 2008, effective from and after July 1, 2008 (approved March 24, 2008), amended this section. Section 3 of ch. 549, Laws of 2008, effective from and after July 1, 2008 (approved May 10, 2008), also amended this section. As set out above, this section reflects the language of both sections pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee ratified the integration of these amendments as consistent with the legislative intent at its August 5, 2008, meeting.

Editor's Notes —

Laws of 2011, ch. 545, § 8, effective July 1, 2011, amended Laws of 2008, ch. 549, § 9, to extend the date of the repealer for this section from July 1, 2011, until July 1, 2014. Subsequently, Laws of 2011, ch. 531, § 2, effective July 2, 2011, repealed Laws of 2008, ch. 549, § 9, to delete the repealer for this section.

Cross References —

Traveling expenses of state officers and employees, see § 25-3-41.

Advisory council's duties as to the administration of funds appropriated to the state board of health from the emergency medical services operating fund, see § 41-59-61.

OPINIONS OF THE ATTORNEY GENERAL

A physician on staff at the Elvis Presley Memorial Trauma Center in Memphis may be appointed by the governor as an EMS Advisory Council representative of the trauma region encompassing that hospital when that physician lives and practices in Tennessee. 2004 Miss. Op. Att'y Gen. 350.

§ 41-59-9. License and permit required.

From and after October 1, 1974, no person, firm, corporation, association, county, municipality, or metropolitan government or agency, either as owner, agent or otherwise, shall hereafter furnish, operate, conduct, maintain, advertise or otherwise engage in the business of service of transporting patients upon the streets, highways or airways of Mississippi unless he holds a currently valid license and permit, for each ambulance, issued by the board.

HISTORY:

Laws, 1974, ch. 507, § 5(1), eff from and after passage (approved April 3, 1974).

§ 41-59-11. Application for license [Repealed effective July 1, 2020].

Application for license shall be made to the board by private firms or nonfederal governmental agencies. The application shall be made upon forms in accordance with procedures established by the board and shall contain the following:

(a) The name and address of the owner of the ambulance service or proposed ambulance service;

(b) The name in which the applicant is doing business or proposes to do business;

(c) A description of each ambulance including the make, model, year of manufacture, motor and chassis numbers, color scheme, insignia, name, monogram or other distinguishing characteristics to be used to designate applicant's ambulance;

(d) The location and description of the place or places from which the ambulance service is intended to operate; and

(e) Such other information as the board shall deem necessary.

Each application for a license shall be accompanied by a license fee to be fixed by the board, which shall be paid to the board. Any increase in the fee charged by the board under this section shall be in accordance with the provisions of Section 41-3-65.

HISTORY:

Laws, 1974, ch. 507, § 5(2); Laws, 1979, ch. 445, § 1; Laws, 1982, ch. 345, § 1; Laws, 1991, ch. 606, § 3; Laws, 2016, ch. 510, § 9, eff from and after July 1, 2016.

Editor's Notes —

Laws of 2016, ch. 510, § 65 provides:

"SECTION 65. This act shall stand repealed on July 1, 2020."

§ 41-59-13. Issuance of license.

The board shall issue a license which shall be valid for a period of one (1) year when it determines that all the requirements of this chapter have been met.

HISTORY:

Laws, 1974, ch. 507, § 5(3), eff from and after passage (approved April 3, 1974).

§ 41-59-15. Periodic inspections.

Subsequent to issuance of any license, the board shall cause to be inspected each ambulance service, including ambulances, equipment, personnel, records, premises and operational procedures whenever such inspection is deemed necessary, but in any event not less than two (2) times each year. The periodic inspection herein required shall be in addition to any other state or local safety or motor vehicle inspections required for ambulances or other motor vehicles provided by law or ordinance.

HISTORY:

Laws, 1974, ch. 507, § 5(4), eff from and after passage (approved April 3, 1974).

§ 41-59-17. Suspension or revocation of license; renewal [Repealed effective July 1, 2020].

(1) The board is authorized to suspend or revoke a license whenever it determines that the holder no longer meets the requirements prescribed for operating an ambulance service.

(2) A license issued under this chapter may be renewed upon payment of a renewal fee to be fixed by the board, which shall be paid to the board. Any increase in the fee charged by the board under this subsection shall be in accordance with the provisions of Section 41-3-65. Renewal of any license

issued under the provisions of this chapter shall require conformance with all the requirements of this chapter as upon original licensing.

HISTORY:
Laws, 1974, ch. 507, § 5(5, 6); Laws, 1979, ch. 445, § 2; Laws, 1982, ch. 345, § 2; Laws, 1991, ch. 606, § 4; Laws, 2016, ch. 510, § 10, eff from and after July 1, 2016.

Editor's Notes —
Laws of 2016, ch. 510, § 65 provides:
"SECTION 65. This act shall stand repealed on July 1, 2020."

RESEARCH REFERENCES

Am. Jur.
1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (Complaint, petition, or declaration – By license holder – Against administrative agency – To enjoin further proceedings to suspend or revoke license – Attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.

§ 41-59-19. Changes of ownership.

The board is authorized to provide for procedures to be utilized in acting on changes of ownership in accordance with regulations established by the board.

HISTORY:
Laws, 1974, ch. 507, § 5(7), eff from and after passage (approved April 3, 1974).

§ 41-59-21. Licensee to conform with local laws or regulations.

The issuance of a license shall not be construed to authorize any person, firm, corporation or association to provide ambulance services or to operate any ambulance not in conformity with any ordinance or regulation enacted by any county, municipality or special purpose district or authority.

HISTORY:
Laws, 1974, ch. 507, § 5(8), eff from and after passage (approved April 3, 1974).

§ 41-59-23. Ambulance permit [Repealed effective July 1, 2020].

(1) Before a vehicle can be operated as an ambulance, its licensed owner must apply for and receive an ambulance permit issued by the board for such vehicle. Application shall be made upon forms and according to procedures established by the board. Each application for an ambulance permit shall be accompanied by a permit fee to be fixed by the board, which shall be paid to the board. Any increase in the fee charged by the board under this subsection shall be in accordance with the provisions of Section 41-3-65. Prior to issuing an original or renewal permit for an ambulance, the vehicle for which the permit is issued shall be inspected and a determination made that the vehicle meets all requirements as to vehicle design, sanitation, construction, medical equipment and supplies set forth in this chapter and regulations promulgated by the board. Permits issued for ambulance shall be valid for a period not to exceed one (1) year.

(2) The board is authorized to suspend or revoke an ambulance permit any time it determines that the vehicle and/or its equipment no longer meets the requirements specified by this chapter and regulations promulgated by the board.

(3) The board may issue temporary permits valid for a period not to exceed ninety (90) days for ambulances not meeting required standards when it determines the public interest will thereby be served.

(4) When a permit has been issued for an ambulance as specified herein, the ambulance records relating to maintenance and operation of such ambulance shall be open to inspection by a duly authorized representative of the board during normal working hours.

(5) An ambulance permit issued under this chapter may be renewed upon payment of a renewal fee to be fixed by the board, which shall be paid to the board. Any increase in the fee charged by the board under this subsection shall be in accordance with the provisions of Section 41-3-65. Renewal of any ambulance permit issued under the provisions of this chapter shall require conformance with all requirements of this chapter.

HISTORY:

Laws, 1974, ch. 507, § 6; Laws, 1979, ch. 445, § 3; Laws, 1982, ch. 345, § 3; Laws, 1991, ch. 606, § 5; Laws, 2016, ch. 510, § 11, eff from and after July 1, 2016.

Editor's Notes —

Laws of 2016, ch. 510, § 65 provides:

"SECTION 65. This act shall stand repealed on July 1, 2020."

§ 41-59-25. Standards for ambulance vehicles.

(1) Standards for the design, construction, equipment, sanitation and maintenance of ambulance vehicles shall be developed by the board with the advice of the advisory council. Each standard may be revised as deemed necessary by the board when it determines, with the advice of the advisory council, that such will be in the public interest. However, standards for design and construction shall not take effect until July 1, 1979; and such standards when promulgated shall substantially conform to any pertinent recommendations and criteria established by the American College of Surgeons and the National Academy of Sciences, and shall be based on a norm that the ambulance shall be sufficient in size to transport one (1) litter patient and an emergency medical technician with space around the patient to permit a technician to administer life supporting treatment to at least one (1) patient during transit.

(2) On or after July 1, 1975, each ambulance shall have basic equipment determined essential by the board with the advice of the advisory council.

(3) Standards governing the sanitation and maintenance of ambulance vehicles shall require that the interior of the vehicle and the equipment therein be maintained in a manner that is safe, sanitary, and in good working order at all times.

(4) Standards for the design, construction, equipment and maintenance of special use EMS vehicles shall be developed by the board with advice of the advisory council.

HISTORY:
Laws, 1974, ch. 507, § 7(1-3); Laws, 1991, ch. 482, § 2, eff from and after July 1, 1991.

Cross References —
Definition of authorized emergency vehicles, see § 63-3-103.

Lights required on emergency vehicles, see § 63-7-19.

§ 41-59-27. Insurance.

There shall be at all times in force and effect on any ambulance vehicle operating in this state insurance issued by an insurance company licensed to do business in this state, which shall provide coverage:

(a) For injury to or death of individuals resulting from any cause for which the owner of said ambulance would be liable regardless of whether the ambulance was being driven by the owner or his agent; and

(b) Against damage to the property of another, including personal property.

The minimum amounts of such insurance coverage shall be determined by the board with the advice of the advisory council, except that the minimum coverage shall not be less than Twenty-five Thousand Dollars ($25,000.00) for bodily injury to or death of one (1) person in any one (1) accident, Fifty Thousand Dollars ($50,000.00) for bodily injury to or death of two (2) or more persons in any one (1) accident, and Ten Thousand Dollars ($10,000.00) for damage to or destruction of property of others in any one (1) accident.

HISTORY:
Laws, 1974, ch. 507, § 7(4), eff from and after passage (approved April 3, 1974).

RESEARCH REFERENCES

ALR.
Liability of operator of ambulance service for personal injuries to person being transported. 21 A.L.R.2d 910.
Liability for personal injury or property damage from operation of ambulance. 84 A.L.R.2d 121.
Liability of operator of ambulance service for personal injuries to person being transported. 68 A.L.R.4th 14.

Am. Jur.
8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 812 et seq.

CJS.
60 C.J.S., Motor Vehicles §§ 439, 440.

§ 41-59-29. Personnel required for transporting patients.

From and after January 1, 1976, every ambulance, except those specifically excluded from the provisions of this chapter, when transporting patients in this state, shall be occupied by at least one (1) person who possesses a valid emergency medical technician state certificate, or person who has a privilege to practice under the Emergency Medical Services Personnel Licensure Interstate Compact; or medical/nursing license and a driver with a valid resident driver's license.

HISTORY:
Laws, 1974, ch. 507, § 8(1); Laws, 2017, ch. 371, § 4, eff from and after July 1, 2017.

Joint Legislative Committee Note —
Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section, as amended by Chapter 371, Laws of 2017, by substituting "Emergency Medical Services Personnel Licensure Interstate Compact" for "Recognition of Emergency Medical Services Personnel Licensure Interstate Compact." The Joint Committee ratified the correction at the August 15, 2017, meeting of the Committee.

Amendment Notes —
The 2017 amendment inserted "or person who has a privilege...Licensure Interstate Compact."

Cross References —
EMS Personnel Licensure Interstate Compact, see § 41-59-101.
Definition of terms used in §§ 41-59-29 through 41-59-37, see § 41-60-11.

§ 41-59-31. Emergency medical technicians; training program.

The board shall develop an emergency medical technicians training program based upon the nationally approved United States Department of Transportation "Basic Training Program for Emergency Medical Technicians-Ambulance" prepared in compliance with recommendations of the National Academy of Sciences. The program shall be periodically revised by the board to meet new and changing needs.

HISTORY:
Laws, 1974, ch. 507, § 8(2), eff from and after passage (approved April 3, 1974).

Cross References —
Definition of terms used in §§ 41-59-29 through 41-59-37, see § 41-60-11.

§ 41-59-33. Emergency medical technicians; certification [Repealed effective July 1, 2020].

(1) Any person desiring certification as an emergency medical technician shall apply to the board using forms prescribed by the board. Each application for an emergency medical technician certificate shall be accompanied by a certificate fee to be fixed by the board, which shall be paid to the board. Any increase in the fee charged by the board under this section shall be in accordance with the provisions of Section 41-3-65. Upon the successful completion of the board's approved emergency medical technical training program, the board shall make a determination of the applicant's qualifications as an emergency medical technician as set forth in the regulations promulgated by the board, and shall issue an emergency medical technician certificate to the applicant.

(2) Any person who desires to exercise the privilege to practice under the Emergency Medical Services Personnel Licensure Interstate Compact must complete the terms and provisions of the Compact as prescribed in Section 41-59-101.

HISTORY:
Laws, 1974, ch. 507, § 8(3); Laws, 1979, ch. 445, § 4; Laws, 1982, ch. 345, § 4; Laws, 1991, ch. 606, § 6; Laws, 2016, ch. 510, § 12; Laws, 2017, ch. 371, § 5, eff from and after July 1, 2017.

Joint Legislative Committee Note —
Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (2), as amended by Chapter 371, Laws of 2017, by substituting "Emergency Medical Services

Personnel Licensure Interstate Compact" for "Recognition of Emergency Medical Services Personnel Licensure Interstate Compact." The Joint Committee ratified the correction at the August 15, 2017, meeting of the Committee.

Editor's Notes —

Laws of 2016, ch. 510, § 65 provides:

"SECTION 65. This act shall stand repealed on July 1, 2020."

Amendment Notes —

The 2017 amendment added (2).

Cross References —

EMS Personnel Licensure Interstate Compact, see § 41-59-101.

Definition of terms used in §§ 41-59-29 through 41-59-37, see § 41-60-11.

§ 41-59-35. Emergency medical technicians; period of certification; renewal, suspension or revocation of certificate; use of certain EMT titles without certification prohibited; transportation of police dog injured in line of duty to veterinary clinic authorized; penalty for violation. [Repealed effective July 1, 2020].

(1) An emergency medical technician certificate so issued shall be valid for a period not exceeding two (2) years from the date of issuance and may be renewed upon payment of a renewal fee to be fixed by the board, which shall be paid to the board, provided that the holder meets the qualifications set forth in this Chapter 59 and Chapter 60 and rules and regulations promulgated by the board. Any increase in the fee charged by the board under this subsection shall be in accordance with the provisions of Section 41-3-65.

(2) The board is authorized to suspend or revoke a certificate so issued at any time it is determined that the holder no longer meets the prescribed qualifications.

(3) It shall be unlawful for any person, corporation or association to, in any manner, represent himself, herself or itself as an Emergency Medical Technician-Basic, Emergency Medical Technician-Advanced, Emergency Medical Technician-Paramedic, Emergency Medical Technician-Paramedic Critical Care, or Emergency Medical Services Driver, or use in connection with his or its name the words or letters of EMT, emt, paramedic, critical care paramedic, or any other letters, words, abbreviations or insignia which would indicate or imply that he, she or it is an Emergency Medical Technician-Basic, Emergency Medical Technician-Advanced, Emergency Medical Technician-Paramedic, Emergency Medical Technician-Paramedic Critical Care, or Emergency Medical Services Driver, unless certified in accordance with Chapters 59 and 60 of this title and in accordance with the rules and regulations promulgated by the board; or a person who has a privilege to practice under the Emergency Medical Services Personnel Licensure Interstate Compact. It shall be unlawful to employ an uncertified Emergency Medical Technician-Basic, Emergency Medical Technician-Advanced, Emergency Medical Technician-Paramedic, or Emergency Medical Technician-Paramedic Critical Care to provide basic or advanced life-support services.

(4) An EMT, EMT-A, EMR, or Paramedic may transport a police dog injured in the line of duty to a veterinary clinic, hospital emergency department or similar facility if there are no persons requiring medical attention or

transport at that time. For the purposes of this subsection, "police dog" means a dog owned or used by a law enforcement department or agency in the course of the department or agency's work, including a search and rescue dog, service dog, accelerant detection canine, or other dog that is in use by a county, municipal, or state law enforcement agency.

(5) Any Emergency Medical Technician-Basic, Emergency Medical Technician-Advanced, Emergency Medical Technician-Paramedic, Emergency Medical Technician-Paramedic Critical Care, or Emergency Medical Services Driver who violates or fails to comply with these statutes or the rules and regulations promulgated by the board under these statutes shall be subject, after due notice and hearing, to an administrative fine not to exceed One Thousand Dollars ($1,000.00).

HISTORY:

Laws, 1974, ch. 507, § 8(4, 5); Laws, 1979, ch. 445, § 5; Laws, 1982, ch. 345, § 5; Laws, 1991, ch. 606, § 7; Laws, 2001, ch. 542, § 1; Laws, 2013, ch. 311, § 2; Laws, 2016, ch. 510, § 13; Laws, 2017, ch. 371, § 6, eff from and after July 1, 2017; Laws, 2018, ch. 319, § 1, eff from and after July 1, 2018; Laws, 2018, ch. 392, § 1, eff from and after July 1, 2018.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (3), as amended by Chapter 371, Laws of 2017, by substituting "Emergency Medical Services Personnel Licensure Interstate Compact" for "Recognition of Emergency Medical Services Personnel Licensure Interstate Compact." The Joint Committee ratified the correction at the August 15, 2017, meeting of the Committee.

Section 1 of Chapter 319, Laws of 2018, effective from and after July 1, 2018 (approved March 7, 2018), amended this section. Section 1 of Chapter 392, Laws of 2018, effective from and after July 1, 2018 (approved March 19, 2018), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section amended within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 14, 2018, meeting of the Committee.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in subsection (5) by substituting "under these statutes" for "these statutes." The Joint Committee ratified the correction at the August 14, 2018, meeting of the Committee.

Editor's Notes —

Laws of 2016, ch. 510, § 65 provides:

"SECTION 65. This act shall stand repealed on July 1, 2020."

Amendment Notes —

The 2017 amendment added "or a person who has a privilege…Licensure Interstate Compact" at the end of the next-to-last sentence of (3).

The first 2018 amendment (ch. 319), added (4) and redesignated former (4) as (5).

The second 2018 amendment (ch. 319), § 1, substituted "Emergency Medical Technician-Advanced" for "Emergency Medical Technician-Intermediate" throughout the section; substituted "promulgated by the board these statutes" for "promulgated by the board hereunder"; and made a gender neutral change.

Cross References —

EMS Personnel Licensure Interstate Compact, see § 41-59-101.

Definition of terms used in §§ 41-59-29 through 41-59-37, see § 41-60-11.

§ 41-59-37. Temporary ambulance attendant's permit.

The board may, in its discretion, issue a temporary ambulance attendant's permit which shall not be valid for more than one (1) year from the date of issuance, and which shall be renewable to an individual who may or may not meet qualifications established pursuant to this chapter upon determination that such will be in the public interest.

HISTORY:
Laws, 1974, ch. 507, § 8(6), eff from and after passage (approved April 3, 1974).

Cross References —
Definition of terms used in §§ 41-59-29 through 41-59-37, see § 41-60-11.

§ 41-59-39. Standards for invalid vehicles.

The board, after consultation with the emergency medical services advisory council, shall establish minimum standards which permit the operation of invalid vehicles as a separate class of ambulance service.

HISTORY:
Laws, 1974, ch. 507 § 9, eff from and after passage (approved April 3, 1974).

§ 41-59-41. Records.

Each licensee of an ambulance service shall maintain accurate records upon such forms as may be provided, and contain such information as may be required by the board concerning the transportation of each patient within this state and beyond its limits. Such records shall be available for inspection by the board at any reasonable time, and copies thereof shall be furnished to the board upon request.

HISTORY:
Laws, 1974, ch. 507, § 10, eff from and after passage (approved April 3, 1974).

§ 41-59-43. Exemptions.

The following are exempted from the provisions of this chapter:

(a) The occasional use of a privately and/or publicly owned vehicle not ordinarily used in the business of transporting persons who are sick, injured, wounded, or otherwise incapacitated or helpless, or operating in the performance of a lifesaving act.

(b) A vehicle rendering services as an ambulance in case of a major catastrophe or emergency.

(c) Vehicles owned and operated by rescue squads chartered by the state as corporations not for profit or otherwise existing as nonprofit associations which are not regularly used to transport sick, injured or otherwise incapacitated or helpless persons except as a part of rescue operations.

(d) Ambulances owned and operated by an agency of the United States Government.

HISTORY:
Laws, 1974, ch. 507, § 11, eff from and after passage (approved April 3, 1974).

§ 41-59-45. Penalties; injunctive relief.

(1) It shall be the duty of the licensed owner of any ambulance service or other employer of emergency medical technicians for the purpose of providing basic or advanced life support services to insure compliance with the provisions of this Chapter 59 and Chapter 60 and all rules and regulations promulgated by the board.

(2) Any person, corporation or association that violates any rule or regulation promulgated by the board pursuant to these statutes regarding the provision of ambulance services or the provision of basic or advanced life support services by emergency medical technicians shall, after due notice and hearing, be subject to an administrative fine not to exceed One Thousand Dollars ($1,000.00) per occurrence.

(3) Any person violating or failing to comply with any other provisions of this Chapter 59 or Chapter 60 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined an amount not to exceed Fifty Dollars ($50.00) or be imprisoned for a period not to exceed thirty (30) days, or both, for each offense.

(4) The board may cause to be instituted a civil action in the chancery court of the county in which any alleged offender of this Chapter 59 or Chapter 60 may reside or have his principal place of business for injunctive relief to prevent any violation of any provision of this Chapter 59 or Chapter 60, or any rules or regulation adopted by the board pursuant to the provisions of this Chapter 59 or Chapter 60.

(5) Each day that any violation or failure to comply with any provision of this chapter or any rule or regulation promulgated by the board thereto is committed or permitted to continue shall constitute a separate and distinct offense under this section, except that the court may, in its discretion, stay the cumulation of penalties.

It shall not be considered a violation of this Chapter 59 or Chapter 60 for a vehicle domiciled in a nonparticipating jurisdiction to travel in a participating jurisdiction.

HISTORY:

Laws, 1974, ch. 507, § 12; Laws, 2001, ch. 542, § 2, eff from and after July 1, 2001.

Cross References —

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 41-59-47. Options of counties and municipalities as to participation.

The provisions of this chapter shall apply to all counties and incorporated municipalities except those counties and incorporated municipalities electing not to comply as expressed to the board in a written resolution by the governing body of such county or incorporated municipality. The election of any county to be included or excluded shall in no way affect the election of any incorporated municipality to be included or excluded. If any county or municipality elects to be excluded from this chapter, they may later elect to be included by resolution.

All financial grants administered by the state for emergency medical services pertaining to this chapter shall be made available to those counties and incorporated municipalities which are governed by the provisions of this chapter.

HISTORY:
Laws, 1974, ch. 507, § 13, eff from and after passage (approved April 3, 1974).

§ 41-59-49. Appeal from decision of board.

Any person, firm, corporation, association, county, municipality or metropolitan government or agency whose application for a permit or license has been rejected or whose permit or license is suspended or revoked by the board shall have the right to appeal such decision, within thirty (30) days after receipt of the board's written decision, to the chancery court of the county where the applicant or licensee is domiciled. The appeal before the chancery court shall be de novo and the decision of the chancery court may be appealed to the supreme court in the manner provided by law.

HISTORY:
Laws, 1974, ch. 507, § 14, eff from and after passage (approved April 3, 1974).

§ 41-59-51. Districts; authority to establish.

A special subdivision to be known as an emergency medical service district may be established by the board of supervisors or boards of supervisors of any county or group of counties, and/or governing authority or authorities of a municipality or municipalities located in such counties, acting separately or jointly in any combination, to provide emergency hospital care and ambulance services for an area composed of all or part of the geographic areas under the jurisdiction of such boards of supervisors or municipal governing authorities, as may be agreed upon.

HISTORY:
Laws, 1974, ch. 507, § 15(1), eff from and after passage (approved April 3, 1974).

OPINIONS OF THE ATTORNEY GENERAL

Under Sections 19-5-151 and 41-59-51, Fire Protection and EMS Districts are two separate and distinct entities and may not be created as one entity. 1995 Miss. Op. Att'y Gen. 529.

§ 41-59-53. Districts; procedure for establishing.

The boards of supervisors and the municipal governing authorities which intend to establish an emergency medical service district shall set forth such intention, along with a description of the area to be served, the nature of services to be provided, the allocation of expenses among the participating subdivisions, and the form of administration for such district in substantially similar resolutions which shall be adopted by each governing board participating in the emergency medical service district.

HISTORY:
Laws, 1974, ch. 507, § 15(2), eff from and after passage (approved April 3, 1974).

§ 41-59-55. Districts; administration.

Any emergency medical service district created pursuant to this chapter shall be administered in one of the following manners:

(a) The governing authorities of the participating political subdivisions shall appoint a person or persons, who may be an elected official of such political subdivision, to a board which shall be authorized to promulgate policy for and guide the administration of the activities of the district; or

(b) The governing authorities, by mutual and unanimous agreement, shall appoint an executive manager who shall have full authority over the operation of the district.

HISTORY:
Laws, 1974, ch. 507, § 15(3), eff from and after passage (approved April 3, 1974).

§ 41-59-57. Districts; power to receive and expend funds.

The emergency medical service districts authorized under this chapter are empowered to receive funds from all sources and are authorized to expend such funds as may be available for any necessary and proper purpose in the manner provided by law for municipalities. The participating political subdivisions may expend funds from any source for the necessary and proper support of such a district, and they may expend such funds by making a lump sum payment to the board or manager designated to administer the district.

HISTORY:
Laws, 1974, ch. 507, § 15(4), eff from and after passage (approved April 3, 1974).

§ 41-59-59. Funds for support and maintenance of districts.

(1) The board of supervisors of any county of the state participating in the establishment of an emergency medical service district under the provisions of Section 41-59-51 and related statutes of the Mississippi Code of 1972 may set aside, appropriate and expend moneys from the general fund for the support and maintenance of the district. In the event the district is comprised of more than one (1) county, the contributions for support and maintenance may be made on a per capita basis.

(2) Emergency medical service districts may borrow funds in anticipation of the receipt of tax monies as otherwise provided by law for counties or municipalities.

HISTORY:
Laws, 1975, ch. 455; Laws, 1986, ch. 400, § 27, eff from and after October 1, 1986.

§ 41-59-61. Emergency medical services operating fund; assessment on traffic violations.

(1) The assessments that are collected under subsections (1) and (2) of Section 99-19-73 shall be deposited in a special fund that is created in the State Treasury to be designated the "Emergency Medical Services Operating Fund." The Legislature may make appropriations from the Emergency Medical Services Operating Fund to the State Board of Health for the purpose of defraying costs of administration of the Emergency Medical Services Operating Fund (EMSOF) and for redistribution of those funds to the counties, municipalities and organized medical service districts (hereinafter referred to as "governmental units") for the support of the Emergency Medical Services programs. The State Board of Health, with the Emergency Medical Services Advisory Council acting in an advisory capacity, shall administer the disbursement to those governmental units of any funds appropriated to the board from the Emergency Medical Services Operating Fund and the utilization of those funds by the governmental units.

(2) Funds appropriated from the Emergency Medical Services Operating Fund to the State Board of Health shall be made available to all such governmental units to support the Emergency Medical Services programs therein, and those funds shall be distributed to each governmental unit based upon its general population relative to the total population of the state. Disbursement of those funds shall be made on an annual basis at the end of the fiscal year upon the request of each governmental unit. Funds distributed to those governmental units shall be used in addition to existing annual Emergency Medical Services budgets of the governmental units, and no such funds shall be used for the payment of any attorney's fees. The Director of the Emergency Medical Services program or his appointed designee is authorized to require financial reports from the governmental units utilizing these funds in order to provide satisfactory proof of the maintenance of the funding effort by the governmental units.

HISTORY:
Laws, 1982, ch. 344, § 1; Laws, 1983, ch. 522, § 38; Laws, 1985, ch. 352; Laws, 1985, ch. 440, § 6; Laws, 1990, ch. 329, § 7; Laws, 2007, ch. 514, § 12, eff from and after June 30, 2007.

Editor's Notes —
Laws of 2007, ch. 514, § 22 provides as follows:

"SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act." Laws of 2007, ch. 514 was approved on March 30, 2007.

Cross References —
Mississippi Trauma Care Systems Fund deposits from portion of assessments collected under this section, see § 41-59-75.

Deposit of portion of standard state assessment into Emergency Medical Services Operating Fund, see § 99-19-73.

OPINIONS OF THE ATTORNEY GENERAL

Where a county provides a subsidy to a private ambulance service and the subsidy is then returned to the county, such arrangement will not be viewed as an existing emergency medical services budget as required by the statute. 1998 Miss. Op. Att'y Gen. 157.

A reasonable reading of the statute would not appear to intend the disbursement of Emergency Medical Services Operating Funds to groups or activities not within the jurisdiction of the Mississippi State Department of Health and its Emergency Medical Services program, although a decision on this question is within the discretion of the Mississippi State Board of Health with the EMS Advisory Council acting in its advisory capacity. 1998 Miss. Op. Att'y Gen. 157.

§ 41-59-63. Membership subscription programs for prepaid ambulance service not to constitute insurance.

The solicitation of membership subscriptions, the acceptance of membership applications, the charging of membership fees, and the furnishing of prepaid or discounted ambulance service to subscription members and designated members of their households by either a public or private ambulance service licensed and regulated by the State Board of Health pursuant to Section 41-59-1 et seq. shall not constitute the writing of insurance and the agreement under and pursuant to which such prepaid or discounted ambulance service is provided to the subscription members and to designated members of their households shall not constitute a contract of insurance.

HISTORY:

Laws, 1988, ch. 541, § 1; reenacted, Laws, 1991, ch. 348, § 1; reenacted, Laws, 1992, ch. 327, § 1, eff from and after July 1, 1992.

§ 41-59-65. Application for permit to conduct membership subscription program; fees; renewals [Repealed effective July 1, 2020].

Either a public or private ambulance service licensed and regulated by the State Board of Health desiring to offer such a membership subscription program shall make application for permit to conduct and implement such program to the State Board of Health. The application shall be made upon forms in accordance with procedures established by the board and shall contain the following:

(a) The name and address of the owner of the ambulance service;

(b) The name in which the applicant is doing business;

(c) The location and description of the place or places from which the ambulance service operates;

(d) The places or areas in which the ambulance service intends to conduct and operate a membership subscription program; and

(e) Such other information as the board shall deem necessary.

Each application for a permit shall be accompanied by a permit fee of Five Hundred Dollars ($500.00), which shall be paid to the board. The permit shall be issued to expire the next ensuing December 31. The permit issued under this section may be renewed upon payment of a renewal fee of Five Hundred Dollars ($500.00), which shall be paid to the board. Renewal of any permit issued under this section shall require conformance with all requirements of this chapter. Any increase in the fee charged by the board under this section shall be in accordance with the provisions of Section 41-3-65.

HISTORY:

Laws, 1988, ch. 541, § 2; reenacted, Laws, 1991, ch. 348, § 2; reenacted, Laws, 1992, ch. 327, § 2; Laws, 2016, ch. 510, § 14, eff from and after July 1, 2016.

Editor's Notes —

Laws of 2016, ch. 510, § 65 provides:

"SECTION 65. This act shall stand repealed on July 1, 2020."

§ 41-59-67. Requirements for issuance of permit; reserve fund; ambulance service to pay cost of collection of judgment against fund.

The issuance of a permit to conduct and implement a membership subscription program shall require the following:

(a) The posting of a surety bond with one or more surety companies to be approved by the State Board of Health, in the amount of Five Thousand Dollars ($5,000.00) for every one thousand (1,000) subscribers or portion thereof; and

(b) The establishment of a reserve fund to consist of a deposit to the reserve fund with any depository approved by the state for the benefit of the subscription members in the amount of Three Dollars ($3.00) for each subscription member currently subscribing to the subscription program, but not for the designated members of the subscribing member's household, to guarantee perpetuation of the subscription membership program until all memberships are terminated; and

(c) No further deposits shall be required to be made by the ambulance service to the reserve fund after the aggregate sum of the principal amount of said surety bond plus the deposits in the reserve fund is equal to Two Hundred Thousand Dollars ($200,000.00).

In any action brought by a subscriber against the surety bond or the reserve fund, the cost of collection upon a judgment rendered in favor of the subscriber, including attorney's fees, shall be paid by the ambulance service.

HISTORY:

Laws, 1988, ch. 541, § 3; reenacted, Laws, 1991, ch. 348, § 3; reenacted, Laws, 1992, ch. 327, § 3, eff from and after July 1, 1992.

§ 41-59-69. Annual report of ambulance service conducting subscription program.

Annual reports shall be filed with the State Board of Health by the ambulance service permitted to conduct and implement a membership subscription program in the manner and form prescribed by the State Board of Health, which report shall contain the following:

(a) The name and address of the ambulance service conducting the program;

(b) The number of members subscribing to the subscription program;

(c) The revenues generated by subscriptions to the program; and

(d) The name and address of the depository bank in which the reserve fund is deposited and the amount of deposit in said reserve fund.

HISTORY:
Laws, 1988, ch. 541, § 4; reenacted, Laws, 1991, ch. 348, § 4; reenacted, Laws, 1992, ch. 327, § 4, eff from and after July 1, 1992.

§ 41-59-71. Methods of soliciting members; license not required.

Solicitation of membership in the subscription program may be made through direct advertising, group solicitation, by officers and employees of the ambulance service or by individuals without the necessity of licensing of such solicitors.

HISTORY:
Laws, 1988, ch. 541, § 5; reenacted, Laws, 1991, ch. 348, § 5; reenacted, Laws, 1992, ch. 327, § 5, eff from and after July 1, 1992.

§ 41-59-73. Repealed.

Repealed by Laws, 1992, ch. 327, § 6, eff from and after July 1, 1992. [Laws, 1991, ch. 348, § 7]

Editor's Notes —
Former § 41-59-73 provided for the repeal of sections 41-59-63 through 41-59-71.

Laws of 1988, ch. 541, § 6, provided that sections 41-59-63 through 41-59-71 would stand repealed from and after July 1, 1991. Subsequently, Laws of 1991, ch. 348, § 6, amended Laws of 1988, ch. 541, § 6, deleting the provision for the repeal of sections 41-59-63 through 41-59-71. However, Laws of 1991, ch. 348, § 7, added a new section, 41-59-73, providing for the prospective repeal of sections 41-59-63 through 41-59-71. Subsequently, Laws of 1992, ch. 327, § 6, repealed § 41-59-73, effective from and after July 1, 1992.

§ 41-59-75. Mississippi Trauma Care Systems Fund established; Mississippi Trauma Care Escrow Fund created.

(1) The Mississippi Trauma Care Systems Fund is established. Fifteen Dollars ($15.00) collected from each assessment of Twenty Dollars ($20.00) under subsection (1) of Section 99-19-73 and Thirty Dollars ($30.00) collected from each assessment of Forty-five Dollars ($45.00) under subsection (2) of Section 99-19-73, as provided in Section 41-59-61, and any other funds made available for funding the trauma care system, shall be deposited into the fund. Funds appropriated from the Mississippi Trauma Care Systems Fund to the State Board of Health shall be made available for department administration and implementation of the comprehensive state trauma care plan for distribution by the department to designated trauma care regions for regional administration, for the department's trauma specific public information and education plan, and to provide hospital and physician indigent trauma care block grant funding to trauma centers designated by the department. All designated trauma care hospitals are eligible to contract with the department for these funds.

(2) The Mississippi Trauma Care Escrow Fund is created as a special fund in the State Treasury. Whenever the amount in the Mississippi Trauma Care Systems Fund exceeds Twenty-five Million Dollars ($25,000,000.00) in any

fiscal year, the State Fiscal Officer shall transfer the amount above Twenty-five Million Dollars ($25,000,000.00) to the Trauma Care Escrow Fund. Monies in the Trauma Care Escrow Fund shall not lapse into the State General Fund at the end of the fiscal year, and all interest and other earnings on the monies in the Trauma Care Escrow Fund shall be deposited to the credit of the Trauma Care Escrow Fund.

HISTORY:

Laws, 1998, ch. 429, § 4; Laws, 2005, 2nd Ex Sess, ch. 1, § 2; Laws, 2005, 2nd Ex Sess, ch. 1, § 2; Laws, 2008, ch. 549, § 4; reenacted without change, Laws, 2011, ch. 545, § 5, eff from and after July 1, 2011.

Editor's Notes —

Laws of 2011, ch. 545, § 8, effective July 1, 2011, amended Laws of 2008, ch. 549, § 9, to extend the date of the repealer for this section from July 1, 2011, until July 1, 2014. Subsequently, Laws of 2011, ch. 531, § 2, effective July 2, 2011, repealed Laws of 2008, ch. 549, § 9, to delete the repealer for this section.

Cross References —

Assessment of additional fees upon license tags and decals to be deposited in the Mississippi Trauma Care Systems Fund established under this section, see § 27-19-43.

State Board of Health authorization to receive and disburse funds appropriated from the Mississippi Trauma Care System Fund, see § 41-59-5.

Assessment of additional fees for speeding, reckless and careless driving violations to be deposited in the Mississippi Trauma Care Systems Fund established under this section, see § 99-19-73.

OPINIONS OF THE ATTORNEY GENERAL

It is within the discretion of the Department of Health to determine the type of organizational structure that will best meet the intent of the legislature to "reduce death and disability resulting from traumatic injury" through the establishment of a uniform nonfragmented inclusive statewide trauma care system that provides excellent patient care. 1999 Miss. Op. Att'y Gen. 195.

§ 41-59-77. Trauma registry data confidential and not subject to discovery or introduction into evidence in civil actions.

Data obtained under this chapter for use in the trauma registry is for the confidential use of the Mississippi State Department of Health and the persons, public entities or private entities that participate in the collection of the trauma registry data.

Any data which identifies an individual or a family unit that is collected for use in the trauma registry shall be confidential and shall not be subject to discovery or introduction into evidence in any civil action.

HISTORY:

Laws, 1998, ch. 429, § 5, eff from and after July 1, 1998.

Editor's Notes —

Laws of 1998, ch. 429, effective from and after July 1, 1998, amended Sections 41-59-3 through 41-59-7, 41-63-1 and 99-19-73, and enacted Sections 41-59-75 and 41-59-77.

OPINIONS OF THE ATTORNEY GENERAL

Statutes pertaining to the confidentiality and discoverability of reviews conducted under the statewide trauma system discussed. 2003 Miss. Op. Att'y Gen. 645.

Statutes pertaining to the confidentiality and discoverability of reviews conducted under the statewide trauma system discussed. 2003 Miss. Op. Att'y Gen. 645.

§ 41-59-79. Certification of first responders by State Board of Health [Repealed effective July 1, 2020].

Any person desiring certification as a medical first responder shall apply to the board using forms prescribed by the board. Each application for a medical first responder certificate shall be accompanied by a certificate fee to be fixed by the board, which shall be paid to the board. Any increase in the fee charged by the board under this section shall be in accordance with the provisions of Section 41-3-65. Upon the successful completion of the board's approved medical first responder training program, the board shall make a determination of the applicant's qualifications as a medical first responder as set forth in the regulations promulgated by the board, and shall issue a medical first responder certificate to the applicant.

HISTORY:

Laws, 2002, ch. 623, § 3; brought forward without change, Laws, 2002, 1st Ex Sess, ch. 3, § 3; Laws, 2004, ch. 581, § 2; Laws, 2016, ch. 510, § 15, eff from and after July 1, 2016.

Editor's Notes —

Laws of 2016, ch. 510, § 65 provides:

"SECTION 65. This act shall stand repealed on July 1, 2020."

§ 41-59-81. Promulgation of rules and regulations governing first responder basic life support.

(1) The State Board of Health is authorized to promulgate and enforce rules and regulations to provide for the best and most effective emergency medical care by medical first responders, and to comply with national standards for medical first responders. Notwithstanding any other provision of law, medical first responder personnel may be authorized to provide medical first responder services as defined by rules and regulations promulgated by the State Board of Health.

Rules and regulations promulgated under this authority shall, as a minimum:

(a) Define and authorize functions and training programs for medical first responder personnel; however, all those training programs shall meet or exceed the performance requirements of the most current training program "First Responder: National Standard Curriculum" as developed by the United States Department of Transportation, National Highway Traffic Safety Administration.

(b) Specify minimum testing and certification requirements and provide for continuing education and periodic recertification for all medical first responder personnel.

(2) Counties, municipalities and designated EMS districts may regulate the activities of medical first responders in addition to the regulation imposed by rules and regulations promulgated by the State Board of Health.

(3) The State Board of Health and the State Department of Health shall not be authorized to regulate the activities of, or require the state certification of, those first responders who are not medical first responders.

HISTORY:

Laws, 2002, ch. 623, § 4; Laws, 2002, 1st Ex Sess, ch. 3, § 4; brought forward without change, Laws, 2002, 1st Ex Sess, ch. 3, § 4; Laws, 2004, ch. 581, § 3, eff from and after July 1, 2004.

Editor's Notes —

Laws of 2002, ch. 623, § 5, as amended by Laws, 2002, 1st Ex Sess, ch. 3, § 5, provides as follows:

"SECTION 5. This act shall take effect and be in force from and after July 1, 2004."

§ 41-59-83. Repealed.

Repealed by Laws, 2004, ch. 581, § 4.

[Laws, 2002, ch. 623, § 2; brought forward without change, Laws, 2002, 1st Ex Sess, ch. 3, § 2, eff from and after June 21, 2002.]

Editor's Notes —

Former § 41-59-83 was entitled "Certain emergency medical personnel authorized to carry and administer epinephrine from auto-injector in treatment of persons experiencing allergic reactions."

§ 41-59-85. Requirements for ambulances and special use medical service vehicles operating in emergency mode.

(1) The driver of any vehicle other than an official emergency vehicle shall not follow any moving ambulance that is engaged in an emergency medical call closer than five hundred (500) feet, or park the vehicle within two hundred (200) feet of where the ambulance has stopped and a patient is either being loaded or unloaded.

(2) Every ambulance and special use EMS vehicle shall be marked with red lights front and back and also may be marked with white and amber lights in addition to red lights.

(3) Drivers of ambulances and special use EMS vehicles shall operate in the emergency mode with warning lights and siren at all times while engaged in an emergency medical call and operating the emergency vehicle in a manner to take exceptions to the traffic laws and regulations as provided in Section 63-3-1 et seq., so as to warn other drivers of nonemergency vehicles to yield the right-of-way of the authorized emergency vehicle. Ambulances and special use EMS vehicles may use emergency warning lights only if they are engaged in an emergency medical call and they are stopped or parked, or if they are moving and operating the vehicle in a manner so as to abide by all traffic laws and regulations as provided in Section 63-3-1 et seq. No driver of any ambulance or special use EMS vehicle shall assume any special privilege from traffic laws and regulations except when the emergency vehicle is operated in the emergency mode, with warning lights and siren, while engaged in an emergency medical call.

HISTORY:

Laws, 2004, ch. 425, § 2, eff from and after July 1, 2004.

EMS PERSONNEL LICENSURE INTERSTATE COMPACT

Sec.
41-59-101. EMS Personnel Licensure Interstate Compact.

Sec.
41-59-103. "State EMS Authority" defined.

§ 41-59-101. EMS Personnel Licensure Interstate Compact.

The EMS Personnel Licensure Interstate Compact is enacted into law and entered into by this state with any and all states legally joining in the Compact in accordance with its terms in the form substantially as follows:

EMS PERSONNEL LICENSURE INTERSTATE COMPACT

Section 1. Purpose. In order to protect the public through verification of competency and ensure accountability for patient care related activities all states license emergency medical services (EMS) personnel, such as emergency medical technicians (EMTs), advanced EMTs and paramedics. This Compact is intended to facilitate the day-to-day movement of EMS personnel across state boundaries in the performance of their EMS duties as assigned by an appropriate authority and authorize state EMS offices to afford immediate legal recognition to EMS personnel licensed in a member state. This Compact recognizes that states have a vested interest in protecting the public's health and safety through their licensing and regulation of EMS personnel and that such state regulation shared among the member states will best protect public health and safety. This Compact is designed to achieve the following purposes and objectives:

(a) Increase public access to EMS personnel;

(b) Enhance the states' ability to protect the public's health and safety, especially patient safety;

(c) Encourage the cooperation of member states in the areas of EMS personnel licensure and regulation;

(d) Support licensing of military members who are separating from an active duty tour and their spouses;

(e) Facilitate the exchange of information between member states regarding EMS personnel licensure, adverse action and significant investigatory information;

(f) Promote compliance with the laws governing EMS personnel practice in each member state; and

(g) Invest all member states with the authority to hold EMS personnel accountable through the mutual recognition of member state licenses.

Section 2. Definitions. In this Compact:

(a) "Advanced Emergency Medical Technician (AEMT)" means an individual licensed with cognitive knowledge and a scope of practice that corresponds to that level in the National EMS Education Standards and National EMS Scope of Practice Model.

(b) "Adverse action" means any administrative, civil, equitable or criminal action permitted by a state's laws which may be imposed against licensed EMS personnel by a state EMS authority or state court, including, but not limited to, actions against an individual's license such as revocation, suspension, probation, consent agreement, monitoring or other limitation or encumbrance on the individual's practice, letters of reprimand or admonition, fines, criminal convictions and state court judgments enforcing adverse actions by the state EMS authority.

(c) "Alternative program" means a voluntary, nondisciplinary substance abuse recovery program approved by a state EMS authority.

(d) "Certification" means the successful verification of entry-level cognitive and psychomotor competency using a reliable, validated, and legally defensible examination.

(e) "Commission" means the national administrative body of which all states that have enacted the Compact are members.

(f) "Emergency Medical Technician (EMT)" means an individual licensed with cognitive knowledge and a scope of practice that corresponds to that level in the National EMS Education Standards and National EMS Scope of Practice Model.

(g) "Home state" means a member state where an individual is licensed to practice emergency medical services.

(h) "License" means the authorization by a state for an individual to practice as an EMT, AEMT, paramedic, or a level in between EMT and paramedic.

(i) "Medical director" means a physician licensed in a member state who is accountable for the care delivered by EMS personnel.

(j) "Member state" means a state that has enacted this Compact.

(k) "Privilege to practice" means an individual's authority to deliver emergency medical services in remote states as authorized under this Compact.

(*l*) "Paramedic" means an individual licensed with cognitive knowledge and a scope of practice that corresponds to that level in the National EMS Education Standards and National EMS Scope of Practice Model.

(m) "Remote state" means a member state in which an individual is not licensed.

(n) "Restricted" means the outcome of an adverse action that limits a license or the privilege to practice.

(o) "Rule" means a written statement by the Interstate Commission promulgated pursuant to Section 12 of this Compact that is of general applicability; implements, interprets, or prescribes a policy or provision of the Compact; or is an organizational, procedural, or practice requirement of the Commission and has the force and effect of statutory law in a member state and includes the amendment, repeal, or suspension of an existing rule.

(p) "Scope of practice" means defined parameters of various duties or services that may be provided by an individual with specific credentials. Whether regulated by rule, statute, or court decision, it tends to represent the limits of services an individual may perform.

(q) "Significant investigatory information" means:

(i) Investigative information that a state EMS authority, after a preliminary inquiry that includes notification and an opportunity to respond if required by state law, has reason to believe, if proved true, would result in the imposition of an adverse action on a license or privilege to practice; or

(ii) Investigative information that indicates that the individual represents an immediate threat to public health and safety regardless of whether the individual has been notified and had an opportunity to respond.

(r) "State" means any state, commonwealth, district, or territory of the United States.

(s) "State EMS authority" means the board, office, or other agency with the legislative mandate to license EMS personnel.

Section 3. Home state licensure. (1) Any member state in which an individual holds a current license shall be deemed a home state for purposes of this Compact.

(2) Any member state may require an individual to obtain and retain a license to be authorized to practice in the member state under circumstances not authorized by the privilege to practice under the terms of this Compact.

(3) A home state's license authorizes an individual to practice in a remote state under the privilege to practice only if the home state:

(a) Currently requires the use of the National Registry of Emergency Medical Technicians (NREMT) examination as a condition of issuing initial licenses at the EMT and paramedic levels;

(b) Has a mechanism in place for receiving and investigating complaints about individuals;

(c) Notifies the Commission, in compliance with the terms herein, of any adverse action or significant investigatory information regarding an individual;

(d) No later than five (5) years after activation of the Compact, requires a criminal background check of all applicants for initial licensure, including the use of the results of fingerprint or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation with the exception of federal employees who have suitability determination in accordance with US CFR Section 731.202 and submit documentation of such as promulgated in the rules of the Commission; and

(e) Complies with the rules of the Commission.

Section 4. Compact privilege to practice. (1) Member states shall recognize the privilege to practice of an individual licensed in another member state that is in conformance with Section 3.

(2) To exercise the privilege to practice under the terms and provisions of this Compact, an individual must:

(a) Be at least eighteen (18) years of age;

(b) Possess a current unrestricted license in a member state as an EMT, AEMT, paramedic, or state recognized and licensed level with a scope of practice and authority between EMT and paramedic; and

(c) Practice under the supervision of a medical director.

(3) An individual providing patient care in a remote state under the privilege to practice shall function within the scope of practice authorized by

the home state unless and until modified by an appropriate authority in the remote state as may be defined in the rules of the Commission.

(4) Except as provided in Section 4(3), an individual practicing in a remote state will be subject to the remote state's authority and laws. A remote state may, in accordance with due process and that state's laws, restrict, suspend, or revoke an individual's privilege to practice in the remote state and may take any other necessary actions to protect the health and safety of its citizens. If a remote state takes action it shall promptly notify the home state and the Commission.

(5) If an individual's license in any home state is restricted or suspended, the individual shall not be eligible to practice in a remote state under the privilege to practice until the individual's home state license is restored.

(6) If an individual's privilege to practice in any remote state is restricted, suspended, or revoked the individual shall not be eligible to practice in any remote state until the individual's privilege to practice is restored.

Section 5. Conditions of practice in a remote state. An individual may practice in a remote state under a privilege to practice only in the performance of the individual's EMS duties as assigned by an appropriate authority, as defined in the rules of the Commission, and under the following circumstances:

(a) The individual originates a patient transport in a home state and transports the patient to a remote state;

(b) The individual originates in the home state and enters a remote state to pick up a patient and provide care and transport of the patient to the home state;

(c) The individual enters a remote state to provide patient care and/or transport within that remote state;

(d) The individual enters a remote state to pick up a patient and provide care and transport to a third member state;

(e) Other conditions as determined by rules promulgated by the Commission.

Section 6. Relationship to Emergency Management Assistance Compact. Upon a member state's governor's declaration of a state of emergency or disaster that activates the Emergency Management Assistance Compact (EMAC), all relevant terms and provisions of EMAC shall apply and to the extent any terms or provisions of this Compact conflicts with EMAC, the terms of EMAC shall prevail with respect to any individual practicing in the remote state in response to such declaration.

Section 7. Veterans, service members separating from active duty military, and their spouses. (1) Member states shall consider a veteran, active military service member, and member of the National Guard and Reserves separating from an active duty tour, and a spouse thereof, who holds a current valid and unrestricted NREMT certification at or above the level of the state license being sought as satisfying the minimum training and examination requirements for such licensure.

(2) Member states shall expedite the processing of licensure applications submitted by veterans, active military service members, and members of the

National Guard and Reserves separating from an active duty tour, and their spouses.

(3) All individuals functioning with a privilege to practice under this section remain subject to the adverse actions provisions of Section 8.

Section 8. Adverse actions. (1) A home state shall have exclusive power to impose adverse action against an individual's license issued by the home state.

(2) If an individual's license in any home state is restricted or suspended, the individual shall not be eligible to practice in a remote state under the privilege to practice until the individual's home state license is restored.

(a) All home state adverse action orders shall include a statement that the individual's Compact privileges are inactive. The order may allow the individual to practice in remote states with prior written authorization from both the home state and remote state's EMS authority.

(b) An individual currently subject to adverse action in the home state shall not practice in any remote state without prior written authorization from both the home state and remote state's EMS authority.

(3) A member state shall report adverse actions and any occurrences that the individual's Compact privileges are restricted, suspended, or revoked to the Commission in accordance with the rules of the Commission.

(4) A remote state may take adverse action on an individual's privilege to practice within that state.

(5) Any member state may take adverse action against an individual's privilege to practice in that state based on the factual findings of another member state, so long as each state follows its own procedures for imposing such adverse action.

(6) A home state's EMS authority shall investigate and take appropriate action with respect to reported conduct in a remote state as it would if such conduct had occurred within the home state. In such cases, the home state's law shall control in determining the appropriate adverse action.

(7) Nothing in this Compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action and that such participation shall remain nonpublic if required by the member state's laws. Member states must require individuals who enter any alternative programs to agree not to practice in any other member state during the term of the alternative program without prior authorization from such other member state.

Section 9. Additional powers invested in a member state's EMS authority. A member state's EMS authority, in addition to any other powers granted under state law, is authorized under this Compact to:

(a) Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a member state's EMS authority for the attendance and testimony of witnesses, and/or the production of evidence from another member state, shall be enforced in the remote state by any court of competent jurisdiction, according to that court's practice and procedure in considering subpoenas issued in its own proceedings. The issuing state EMS authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses and/or evidence are located; and

(b) Issue cease and desist orders to restrict, suspend, or revoke an individual's privilege to practice in the state.

Section 10. Establishment of the Interstate Commission for EMS Personnel Practice. (1) The Compact states hereby create and establish a joint public agency known as the Interstate Commission for EMS Personnel Practice.

(a) The Commission is a body politic and an instrumentality of the Compact states.

(b) Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

(c) Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

(2) Membership, voting, and meetings.

(a) Each member state shall have and be limited to one (1) delegate. The responsible official of the state EMS authority or his designee shall be the delegate to this Compact for each member state. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the member state in which the vacancy exists. In the event that more than one (1) board, office, or other agency with the legislative mandate to license EMS personnel at and above the level of EMT exists, the Governor of the state will determine which entity will be responsible for assigning the delegate.

(b) Each delegate shall be entitled to one (1) vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

(c) The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

(d) All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Section 12.

(e) The Commission may convene in a closed, nonpublic meeting if the Commission must discuss:

(i) Noncompliance of a member state with its obligations under the Compact;

(ii) The employment, compensation, discipline or other personnel matters, practices or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;

(iii) Current, threatened, or reasonably anticipated litigation;

(iv) Negotiation of contracts for the purchase or sale of goods, services, or real estate;

(v) Accusing any person of a crime or formally censuring any person;

(vi) Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

(vii) Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(viii) Disclosure of investigatory records compiled for law enforcement purposes;

(ix) Disclosure of information related to any investigatory reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the Compact; or

(x) Matters specifically exempted from disclosure by federal or member state statute.

(f) If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

(3) The Commission shall, by a majority vote of the delegates, prescribe bylaws and/or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the Compact, including but not limited to:

(a) Establishing the fiscal year of the Commission;

(b) Providing reasonable standards and procedures:

(i) For the establishment and meetings of other committees; and

(ii) Governing any general or specific delegation of any authority or function of the Commission;

(c) Providing reasonable procedures for calling and conducting meetings of the Commission, ensuring reasonable advance notice of all meetings, and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and proprietary information, including trade secrets. The Commission may meet in closed session only after a majority of the membership votes to close a meeting in whole or in part. As soon as practicable, the Commission must make public a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed;

(d) Establishing the titles, duties and authority, and reasonable procedures for the election of the officers of the Commission;

(e) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar laws of any member state, the bylaws shall exclusively govern the personnel policies and programs of the Commission;

(f) Promulgating a code of ethics to address permissible and prohibited activities of Commission members and employees;

(g) Providing a mechanism for winding up the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of the Compact after the payment and/or reserving of all of its debts and obligations;

(h) The Commission shall publish its bylaws and file a copy thereof, and a copy of any amendment thereto, with the appropriate agency or officer in each of the member states, if any;

(i) The Commission shall maintain its financial records in accordance with the bylaws;

(j) The Commission shall maintain its financial records in accordance with the bylaws;

(4) The Commission shall have the following powers:

(a) The authority to promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rules shall have the force and effect of law and shall be binding in all member states;

(b) To bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any state EMS authority or other regulatory body responsible for EMS personnel licensure to sue or be sued under applicable law shall not be affected;

(c) To purchase and maintain insurance and bonds;

(d) To borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state;

(e) To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

(f) To accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the Commission shall strive to avoid any appearance of impropriety and/or conflict of interest;

(g) To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the Commission shall strive to avoid any appearance of impropriety;

(h) To sell convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

(i) To establish a budget and make expenditures;

(j) To borrow money;

(k) To appoint committees, including advisory committees comprised of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this Compact and the bylaws;

(*l*) To provide and receive information from, and to cooperate with, law enforcement agencies;

(m) To adopt and use an official seal; and

(n) To perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of EMS personnel licensure and practice.

(5) Financing of the Commission.

(a) The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

(b) The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

(c) The Commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a rule binding upon all member states.

(d) The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the member states, except by and with the authority of the member state.

(e) The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

(6) Qualified immunity, defense, and indemnification.

(a) The members, officers, executive director, employees and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

(b) The Commission shall defend any member, officer, executive director, employee or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

(c) The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

Section 11. Coordinated database. (1) The Commission shall provide for the development and maintenance of a coordinated database and reporting system containing licensure, adverse action, and significant investigatory information on all licensed individuals in member states.

(2) Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the coordinated database on all individuals to whom this Compact is applicable as required by the rules of the Commission, including:

(a) Identifying information;

(b) Licensure data;

(c) Significant investigatory information;

(d) Adverse actions against an individual's license;

(e) An indicator that an individual's privilege to practice is restricted, suspended or revoked;

(f) Nonconfidential information related to alternative program participation;

(g) Any denial of application for licensure, and the reason(s) for such denial; and

(h) Other information that may facilitate the administration of this Compact, as determined by the rules of the Commission.

(3) The coordinated database administrator shall promptly notify all

member states of any adverse action taken against, or significant investigative information on, any individual in a member state.

(4) Member states contributing information to the coordinated database may designate information that may not be shared with the public without the express permission of the contributing state.

(5) Any information submitted to the coordinated database that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the coordinated database.

Section 12. Rulemaking. (1) The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this section and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

(2) If a majority of the Legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Compact, then such rule shall have no further force and effect in any member state.

(3) Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

(4) Prior to promulgation and adoption of a final rule or rules by the Commission, and at least sixty (60) days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a Notice of Proposed Rulemaking:

(a) On the website of the Commission; and

(b) On the website of each member state EMS authority or the publication in which each state would otherwise publish proposed rules.

(5) The Notice of Proposed Rulemaking shall include:

(a) The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

(b) The text of the proposed rule or amendment and the reason for the proposed rule;

(c) A request for comments on the proposed rule from any interested person; and

(d) The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

(6) Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

(7) The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

(a) At least twenty-five (25) persons;

(b) A governmental subdivision or agency; or

(c) An association having at least twenty-five (25) members.

(8) If a hearing is held on the proposed rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing.

(a) All persons wishing to be heard at the hearing shall notify the executive director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five (5) business days before the scheduled date of the hearing.

(b) Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

(c) No transcript of the hearing is required, unless a written request for a transcript is made, in which case the person requesting the transcript shall bear the cost of producing the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This subsection shall not preclude the Commission from making a transcript or recording of the hearing if it so chooses.

(d) Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

(9) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

(10) The Commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

(11) If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed rule without a public hearing.

(12) Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

(a) Meet an imminent threat to public health, safety, or welfare;

(b) Prevent a loss of Commission or member state funds;

(c) Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or

(d) Protect public health and safety.

(13) The Commission or an authorized committee of the Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

Section 13. Oversight, dispute resolution, and enforcement. (1) Oversight:

(a) The executive, legislative, and judicial branches of state government in each member state shall enforce this Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The provisions of this Compact and the rules promulgated hereunder shall have standing as statutory law.

(b) All courts shall take judicial notice of the Compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this Compact which may affect the powers, responsibilities or actions of the Commission.

(c) The Commission shall be entitled to receive service of process in any such proceeding, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, this Compact, or promulgated rules.

(2) Default, technical assistance and termination.

(a) If the Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated rules, the Commission shall:

(i) Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default and/or any other action to be taken by the Commission; and

(ii) Provide remedial training and specific technical assistance regarding the default.

(b) If a state in default fails to cure the default, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the member states, and all rights, privileges and benefits conferred by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

(c) Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the Governor, the majority and minority leaders of the defaulting state's Legislature, and each of the member states.

(d) A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

(e) The Commission shall not bear any costs related to a state that is found to be in default or that has been terminated from the Compact, unless agreed upon in writing between the Commission and the defaulting state.

(f) The defaulting state may appeal the action of the Commission by petitioning the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

(3) Dispute resolution.

(a) Upon request by a member state, the Commission shall attempt to resolve disputes related to the Compact that arise among member states and between member and nonmember states.

(b) The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

(4) Enforcement.

(a) The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this Compact.

(b) By majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices against a member state in default to enforce compliance with the provisions of the Compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

(c) The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

Section 14. Date of implementation of the Interstate Commission for EMS personnel practice and associated rules, withdrawal, and amendment. (1) The Compact shall come into effect on the date on which the Compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, shall be limited to the powers granted to the Commission relating to assembly and the promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the Compact.

(2) Any state that joins the Compact subsequent to the Commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the Compact becomes law in that state. Any rule that has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that state.

(3) Any member state may withdraw from this Compact by enacting a statute repealing the same.

(a) A member state's withdrawal shall not take effect until six (6) months after enactment of the repealing statute.

(b) Withdrawal shall not affect the continuing requirement of the withdrawing state's EMS authority to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.

(4) Nothing contained in this Compact shall be construed to invalidate or prevent any EMS personnel licensure agreement or other cooperative arrangement between a member state and a nonmember state that does not conflict with the provisions of this Compact.

(5) This Compact may be amended by the member states. No amendment to this Compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.

Section 15. Construction and severability. This Compact shall be liberally construed so as to effectuate the purposes thereof. If this Compact shall be held contrary to the Constitution of any state member thereto, the Compact shall remain in full force and effect as to the remaining member states. Nothing in this Compact supersedes state law or rules related to licensure of EMS agencies.

HISTORY:

Laws, 2017, ch. 371, § 1, eff from and after July 1, 2017.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the introductory paragraph, as enacted by Chapter 371, Laws of 2017, by substituting "EMS Personnel Licensure Interstate Compact" for "Recognition of Emergency Medical Services Personnel Licensure Interstate Compact." The Joint Committee ratified the correction at the August 15, 2017, meeting of the Committee.

Editor's Notes —

The Compact came into effect on May 8, 2017, when Georgia became the 10th member state to sign legislation enacting the Compact. Other member states include: Alabama, Colorado, Idaho, Kansas, Tennessee, Texas, Utah, Virginia and Wyoming. More information about the Compact can be found here: https://www.nremt.org/rwd/public/document/replica.

Cross References —

"State EMS authority" means the Mississippi State Board of Health acting through the Mississippi State Department of Health, see § 41-59-103.

Emergency Management Assistance Compact, see § 45-18-1 et seq.

Comparable Laws from other States —

Alabama: Code of Ala. § 22-18-50.
Colorado: C.R.S. 24-60-3501.
Idaho: Idaho Code §§ 56-1013B through 56-1013Q.
Kansas: K.S.A. § 65-6158.
Tennessee: Tenn. Code Ann. § 68-140-601.
Texas: Tex. Health & Safety Code § 778A.001.
Utah: Utah Code Ann. § 26-8c-101 et seq.
Virginia: Va. Code Ann. § 32.1-371.
Wyoming: Wyo. Stat. §§ 33-36-201, 33-36-202.

§ 41-59-103. "State EMS Authority" defined.

The term "State EMS Authority," as referred to in Section 2 of the EMS Personnel Licensure Interstate Compact, means the Mississippi State Board of Health acting through the Mississippi State Department of Health.

HISTORY:

Laws, 2017, ch. 371, § 2, eff from and after July 1, 2017.

Cross References —

EMS Personnel Licensure Interstate Compact, see § 41-59-101.

CHAPTER 60.

EMERGENCY MEDICAL TECHNICIANS — PARAMEDICS — USE OF AUTOMATED EXTERNAL DEFIBRILLATOR

In General. 41-60-1
Use of Automated External Defibrillator in Cases of Sudden Cardiac Death. 41-60-31

IN GENERAL

Sec.
41-60-1 through 41-60-9. Repealed.
41-60-11. Definitions.
41-60-13. Promulgation of rules and regulations by State Board of Health.

§§ 41-60-1 through 41-60-9. Repealed.

Repealed by Laws, 1979, ch. 488, § 3, eff from and after July 1, 1979. [Laws, 1976, ch. 358, §§ 1-5]

Editor's Notes —

Former § 41-60-1 contained a legislative finding and declaration concerning emergency medical care.

Former § 41-60-3 defined the term "mobile intensive care paramedics."

Former § 41-60-5 authorized hospital ancillary medical services and ambulance services to establish emergency medical programs, utilizing mobile intensive care paramedics.

Former § 41-60-7 authorized mobile intensive care paramedics to perform certain specified emergency medical services.

Former § 41-60-9 authorized mobile intensive care paramedics to perform certain specified additional emergency medical services, upon authorization by a physician and upon order of such physician or a registered nurse, when direct communication was maintained between the paramedics and the physician or registered nurse.

§ 41-60-11. Definitions.

As used in Sections 41-59-29 through 41-59-37 and Sections 41-60-11 and 41-60-13, unless the context otherwise requires, the term:

(a) "Advanced life support" means a sophisticated level of prehospital and interhospital emergency care which includes basic life-support functions including cardiopulmonary resuscitation (CPR), plus cardiac monitoring, cardiac defibrillation, telemetered electrocardiography, administration of antiarrhythmic agents, intravenous therapy, administration of specific medications, drugs and solutions, use of adjunctive ventilation devices, trauma care and other authorized techniques and procedures.

(b) "Advanced life-support personnel" means persons other than physicians engaged in the provision of advanced life support, as defined and regulated by rules and regulations promulgated by the board.

(c) "Emergency medical technician-advanced" means a person specially trained in advanced life-support modules, numbers I, II and III as developed for the United States Department of Transportation under Contract No. DOT-HS-900-089, as authorized by the Mississippi State Board of Health.

(d) "Emergency medical technician-paramedic" means a person specially trained in an advanced life-support training program authorized by the Mississippi State Board of Health.

(e) "Emergency medical technician-paramedic critical care" means a person who (i) is licensed as a Mississippi Emergency Medical Technician Paramedic, and (ii) has successfully completed a critical care paramedic program recognized by the Bureau of Emergency Medical Services and the Mississippi State Department of Health.

(f) "Medical control" means directions and advice provided from a centrally designated medical facility staffed by appropriate personnel, operating under medical supervision, supplying professional support through radio or telephonic communication for on-site and in-transit basic and advanced life-support services given by field and satellite facility personnel.

HISTORY:

Laws, 1979, ch. 488, § 1; Laws, 2001, ch. 542, § 3; Laws, 2013, ch. 311, § 1, eff from and after July 1, 2013; Laws, 2018, ch. 392, § 3, eff from and after July 1, 2018.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (a). The word "antiarnythmic" was changed to "antiarrhythmic." The Joint Committee ratified the correction at its May 16, 2002 meeting.

Amendment Notes —

The 2018 amendment substituted "means" for "shall mean" following the terms being defined in (a) through (d) and (f) and for "shall be" in (e); and substituted "Emergency medical technician-advanced" for "Emergency medical technician-intermediate" in (c).

RESEARCH REFERENCES

ALR.

Liability for injury or death allegedly caused by activities of hospital "rescue team". 64 A.L.R.4th 1200.

§ 41-60-13. Promulgation of rules and regulations by State Board of Health.

The Mississippi State Board of Health is authorized to promulgate and enforce rules and regulations to provide for the best and most effective emergency medical care, and to comply with national standards for advanced life support. Notwithstanding any other provision of law, advanced life support personnel may be authorized to provide advanced life support services as defined by rules and regulations promulgated by the State Board of Health. Rules and regulations promulgated pursuant to this authority shall, as a minimum:

(a) Define and authorize appropriate functions and training programs for advanced life support trainees and personnel; provided, that all such training programs shall meet or exceed the performance requirements of the current training program for the emergency medical technician-paramedic, developed for the United States Department of Transportation.

(b) Specify minimum operational requirements which will assure medical control over all advanced life support services.

(c) Specify minimum testing and certification requirements and provide for continuing education and periodic recertification for all advanced life support personnel.

HISTORY:
Laws, 1979, ch. 488, § 2; Laws, 2001, ch. 542, § 4, eff from and after July 1, 2001.

OPINIONS OF THE ATTORNEY GENERAL

This statute grants sole authority to the State Department of Health in promulgating rules and regulations regarding all performance requirements of the training programs for advanced life support trainees and personnel. 2003 Miss. Op. Att'y Gen. 654.

USE OF AUTOMATED EXTERNAL DEFIBRILLATOR IN CASES OF SUDDEN CARDIAC DEATH

Sec.
41-60-31. Definitions.
41-60-33. Requirements and training for use of automated external defibrillator.
41-60-35. Individual authorized to use automated external defibrillator not limited from practicing other authorized health occupations.

§ 41-60-31. Definitions.

As used in Sections 41-60-31 through 41-60-35.

(a) "AED" means an automated external defibrillator, which is a device, heart monitor and defibrillator that:

(i) Has received approval of its premarket notification filed under 21 USCS, Section 360(k) from the United States Food and Drug Administration;

(ii) Is capable of recognizing the presence or absence of ventricular fibrillation, which is an abnormal heart rhythm that causes the ventricles of the heart to quiver and renders the heart unable to pump blood, or rapid ventricular tachycardia, which is a rapid heartbeat in the ventricles and is capable of determining, without intervention by an operator, whether defibrillation should be performed; and

(iii) Upon determining that defibrillation should be performed, automatically charges and advises the operator to deliver hands-free external electrical shock to patients to terminate ventricular fibrillation or ventricular tachycardia when the heart rate exceeds a preset value.

(b) "Emergency medical services (EMS) notification" means activation of the 911 emergency response system or the equivalent.

HISTORY:
Laws, 1999, ch. 489, § 1, eff from and after July 1, 1999.

§ 41-60-33. Requirements and training for use of automated external defibrillator.

Any person may use an automated external defibrillator for the purpose of saving the life of another person in sudden cardiac death, subject to the following requirements:

(a) A Mississippi licensed physician must exercise medical control authority over the person using the AED to ensure compliance with requirements for training, emergency medical services (EMS) notification and maintenance;

(b) The person using the AED must have received appropriate training in cardiopulmonary resuscitation (CPR) and in the use of an AED by the American Heart Association, American Red Cross, National Safety Council or other nationally recognized course in CPR and AED use;

(c) The AED must not operate in a manual mode except when access control devices are in place or when appropriately licensed individuals such as registered nurses, physicians or emergency medical technician-paramedics utilize the AED; and

(d) Any person who renders emergency care or treatment on a person in sudden cardiac death by using an AED must activate the EMS system as soon as possible, and report any clinical use of the AED to the licensed physician.

HISTORY:

Laws, 1999, ch. 489, § 2, eff from and after July 1, 1999.

§ 41-60-35. Individual authorized to use automated external defibrillator not limited from practicing other authorized health occupations.

An individual may use an AED if all of the requirements of Section 41-60-33 are met. However, nothing in Sections 41-60-31 through 41-60-35 shall limit the right of an individual to practice a health occupation that the individual is otherwise authorized to practice under the laws of Mississippi.

HISTORY:

Laws, 1999, ch. 489, § 3, eff from and after July 1, 1999.

CHAPTER 61.

STATE MEDICAL EXAMINER

Mississippi Medical Examiners Act of 1974. [Repealed] 41-61-1
Mississippi Medical Examiner Act of 1986. 41-61-51

MISSISSIPPI MEDICAL EXAMINERS ACT OF 1974 [REPEALED]

Sec.
41-61-1 through 41-61-21. Repealed.
41-61-23. Repealed.

§§ 41-61-1 through 41-61-21. Repealed.

Repealed by Laws, 1986, ch. 459, § 44, eff from and after July 1, 1986.

§ 41-61-1.[Laws, 1974, ch. 398, § 1]

§ 41-61-3. [Laws, 1974, ch. 398, § 2; Laws, 1976, ch. 437; Laws, 1981, ch. 508, § 2; Laws, 1984, ch. 343, § 3]

§ 41-61-5. [Laws, 1974, ch. 398, § 3; Laws, 1981, ch. 508, § 3]

§ 41-61-7. [Laws, 1974, ch. 398, § 4; Laws, 1981, ch. 508, § 4; Laws, 1984, ch. 343, § 4; Laws, 1984, ch. 495, § 19; Laws, 1985, ch. 474, § 50; Laws, 1986, ch. 438, § 29]

§ 41-61-9. [Laws, 1974, ch. 398, § 5]

§ 41-61-11. [Laws, 1974, ch. 398, § 6; Laws, 1981, ch. 508, § 5]

§ 41-61-13. [Laws, 1974, ch. 398, § 7; Laws, 1981, ch. 508, § 6]

§ 41-61-15. [Laws, 1974, ch. 398, § 8; Laws, 1981, ch. 508, § 7]

§ 41-61-17. [Laws, 1974, ch. 398, § 9]

§ 41-61-19. [Laws, 1974, ch. 398, § 10; Laws, 1981, ch. 508, § 8; Laws, 1984, ch. 343, § 5]

§ 41-61-21. [Laws, 1974, ch. 398, § 11; Laws, 1981, ch. 508, § 9]

Editor's Notes —

Former § 41-61-1 was the short title for the chapter.

Former § 41-61-3 created the office of state medical examiner, provided for the appointment, and specified the general powers and duties.

Former § 41-61-5 specified the qualifications for the position.

Former § 41-61-7 authorized the medical examiner to acquire office and facilities, to serve on university faculty, to employ assistants, and to obtain liability insurance.

Former § 41-61-9 directed the medical examiner to investigation certain deaths.

Former § 41-61-11 authorized the medical examiner to perform postmortem examination upon certain decedents.

Former § 41-61-13 directed law enforcement officials and others to cooperate with the medical examiner, and specified the jurisdiction of the examiner.

Former § 41-61-15 pertained to records ant the issuance of death certificates.

Former § 41-61-17 pertained to the admissibility of records as evidence and the subpoena of person preparing report or record.

Former § 41-61-19 directed the medical examiner to prepare reasonable rules and regulations.

Former § 41-61-21 required ever person to report certain deaths and specified penalties for the failure to do so.

Cross References —

Mississippi Medical Examiner Act of 1986, see §§ 41-61-51 et seq.

§ 41-61-23. Repealed.

Repealed by Laws, 1984, ch 343, § 6, eff from and after July 1, 1984. [Laws, 1981, ch. 508, § 1]

Editor's Notes —
Former § 41-61-23 established the state medical examiner commission.

MISSISSIPPI MEDICAL EXAMINER ACT OF 1986

Sec.
41-61-51. Short title.
41-61-53. Definitions.
41-61-55. State Medical Examiner; appointment; discharge; qualifications; State Medical Examiner Advisory Council; composition and purpose.
41-61-57. County medical examiner; county medical examiner investigator; qualifications; appointment of coroner pro tempore; deputy; removal.
41-61-59. Report of death to medical examiner; investigation of death; compensation of chief medical examiner or investigator.
41-61-60. Repealed.
41-61-61. County medical examiner to be notified of death; disturbing body at scene of death; notification to State Medical Examiner; penalty for violations; transporting body to autopsy facility.
41-61-63. Duties of State Medical Examiner; completion of death certificate; medical examiner not to favor particular funeral homes.
41-61-65. Autopsy; reports; immunity from liability; review of determination.
41-61-67. Disinterment; costs; petition for order of exhumation.
41-61-69. Disposition of body without permission of medical examiner; penalties; disposal of body at sea.
41-61-71. Repealed.
41-61-73. Repealed.
41-61-75. Fees; expert witness; expenses; SIDS/Child Death Scene Investigation reports [Repealed effective July 1, 2020].
41-61-77. Central office for Mississippi Forensics Laboratory and State Medical Examiner; use of private facilities for investigating deaths; personnel; pathologists.
41-61-79. Radio system; pager/beeper; morgue or morgue facility; photographic equipment; vehicle; costs.

§ 41-61-51. Short title.

Sections 41-61-51 through 41-61-79 shall be known and cited as Mississippi Medical Examiner Act of 1986.

HISTORY:
Laws, 1986, ch. 459, § 6, eff from and after July 1, 1986.

Cross References —
Mississippi Coroner Reorganization Act of 1986, see §§ 19-21-101 et seq.

Determination of Death, see §§ 41-36-1 et seq.

Autopsies, see §§ 41-37-1 et seq.

Adoption, promulgation, amending, and repealing of rules and regulations applicable to this section, see § 41-61-59.

RESEARCH REFERENCES

Am. Jur.
18 Am. Jur. 2d, Coroners or Medical Examiners §§ 1 et seq.

§ 41-61-53. Definitions.

For the purposes of Sections 41-61-51 through 41-61-79, the following definitions shall apply:

(a) "Certification of death" means signing the death certificate.

(b) "Coroner" means the elected county official provided for in Sections 19-21-101 through 19-21-107.

(c) "County medical examiner investigator" means a nonphysician trained and appointed to investigate and certify deaths affecting the public interest.

(d) "County medical examiner" means a licensed physician appointed to investigate and certify deaths affecting the public interest.

(e) "Death affecting the public interest" means any death of a human being where the circumstances are sudden, unexpected, violent, suspicious or unattended.

(f) "Medical examiner" means the State Medical Examiner, county medical examiners and county medical examiner investigators collectively, unless otherwise specified.

(g) "Pronouncement of death" means the statement of opinion that life has ceased for an individual.

(h) "State medical examiner" means the board certified forensic pathologist/physician appointed by the Commissioner of Public Safety pursuant to Section 41-61-55 to investigate and certify deaths that affect the public interest.

HISTORY:

Laws, 1986, ch. 459, § 7; Laws, 2011, ch. 499, § 2, eff from and after July 1, 2011.

Cross References —

Reporting of deaths caused by Acquired Immune Deficiency Syndrome (AIDS), § 41-23-1.

Determination of death, see §§ 41-36-1 et seq.

Autopsies, see §§ 41-37-1 et seq.

Adoption, promulgation, amending, and repealing of rules and regulations applicable to this section, see § 41-61-59.

§ 41-61-55. State Medical Examiner; appointment; discharge; qualifications; State Medical Examiner Advisory Council; composition and purpose.

(1) There is hereby created the position of State Medical Examiner, to be established as herein provided under the supervision of the Commissioner of Public Safety. The State Medical Examiner shall be appointed by the Commissioner of Public Safety subject to the approval of a majority of a panel composed of the following: (a) the Dean of the University of Mississippi Medical Center School of Medicine; (b) the Dean of the University of Mississippi School of Law; and (c) the State Health Officer. The State Medical Examiner may be discharged only for good cause, upon the recommendation of the Commissioner of Public Safety, and by a majority of the same panel.

(2) Each applicant for the position of State Medical Examiner shall, as a minimum, be a physician who is eligible for a license to practice medicine in Mississippi and be certified in forensic pathology by the American Board of Pathology.

(3) There is hereby created the State Medical Examiner Advisory Council composed of the State Health Officer or his or her designee, the Dean of the University of Mississippi Medical Center School of Medicine or his or her designee, the Commissioner of Public Safety, the Attorney General or his or her designee, the President of the Mississippi Coroners' Association or his or her designee, the President of the Mississippi Prosecutors Association or his or her designee, the President of the Mississippi Public Defenders Association or his or her designee, the President of the Mississippi Association of Chiefs of Police or his or her designee, and the President of the Mississippi Sheriff's Association or his or her designee. The council shall be purely advisory and serve as a liaison between the State Medical Examiner and the various entities related to the Medical Examiner Act.

HISTORY:

Laws, 1986, ch. 459, § 8; Laws, 2011, ch. 499, § 1, eff from and after July 1, 2011.

Cross References —

Determination of death, see §§ 41-36-1 et seq.

Autopsies, see §§ 41-37-1 et seq.

Reapplication for office after removal, see § 41-61-57.

Adoption, promulgation, amending, and repealing of rules and regulations applicable to this section, see § 41-61-59.

JUDICIAL DECISIONS

1. Determination of death.

Expert testimony as to the cause and manner of the victim's death was permissible in defendant's murder trial because the trial court accepted, without objection from defendant, that the expert was qualified in the area of forensic pathology, and the expert did not testify that he was the State Medical Examiner, and, therefore, the expert was not required to be board certified by the American Board of Pathology. Keys v. State, 33 So. 3d 1143, 2009 Miss. App. LEXIS 697 (Miss. Ct. App. 2009), cert. denied, 34 So. 3d 1176, 2010 Miss. LEXIS 228 (Miss. 2010).

RESEARCH REFERENCES

Am. Jur.

18 Am. Jur. 2d, Coroners or Medical Examiners §§ 1 et seq.

§ 41-61-57. County medical examiner; county medical examiner investigator; qualifications; appointment of coroner pro tempore; deputy; removal.

(1) There are hereby created the positions of county medical examiners and county medical examiner investigators, to be established as herein provided through successful completion of the death investigation training school provided for in subsection (5) of this section. Each county medical examiner (CME) shall be a doctor of medicine (M.D.) or osteopathic medicine (D.O.) licensed in the State of Mississippi. Each county medical examiner investigator (CMEI) shall be a nonphysician who shall, as a minimum, possess a high school graduation diploma or its equivalent. Extra consideration for the CMEI position may be given for experience and/or training in health-related fields and medicolegal death investigations.

(2) Each coroner elected in the 1987 general election and thereafter, upon

successful completion of the death investigation training school provided for in subsection (5) of this section, shall be recognized as a county medical examiner or county medical examiner investigator, according to the qualifications set out in subsection (1) of this section, and shall be designated the chief for the county in which he was elected. If the elected or appointed coroner fails to successfully complete the death investigation training school, and thus is unable to take the oath of office, as provided in Section 19-21-105, there shall promptly be appointed a coroner pro tempore in the manner prescribed by Section 9-1-27, and that person shall be designated the chief county medical examiner or county medical examiner investigator until the time of the next death investigation training school, which he must successfully complete or be removed from office. Any elected coroner who has failed to successfully complete the death investigation training school may attend any subsequent death investigation training school conducted during the term for which he was elected, and upon the successful completion thereof, he shall become the chief CME or CMEI for the county in which he was elected. The coroner pro tempore then shall become a deputy CME or CMEI, provided he has successfully completed the death investigation training school. Notwithstanding anything in this section to the contrary, each coroner holding office on July 1, 1986, shall be the chief CME or CMEI for the county in which he was elected through the expiration of his term in January 1988 without having to attend the death investigation training school; however, he may voluntarily attend any such school conducted prior to that time.

(3) There shall be at least one (1) county medical examiner and/or county medical examiner investigator for each county, and one (1) county medical examiner or county medical examiner investigator shall be designated as the chief for each county, except as otherwise provided in subsection (4) of this section. Any county may have deputy county medical examiners or deputy county medical examiner investigators as deemed necessary who shall be appointed jointly by the board of supervisors and the CME or CMEI. However, when the population of a county reaches a total of twenty thousand (20,000) or greater, there shall be one or more officially appointed deputies. Deputies shall be subject to the same qualifications, training and certification requirements, and shall possess the same authority and discharge the same duties, as other county medical examiners or county medical examiner investigators, and shall receive fees and expenses as provided in Sections 41-61-69 and 41-61-75. Any CME or CMEI may be removed by the State Medical Examiner prior to the expiration of his term as CME or CMEI for inefficiency, or other good cause, after written notice and a hearing in compliance with due process law.

(4) One (1) person may serve as the chief CME or CMEI for two (2) or more adjacent counties when that person consents and the boards of supervisors of each county involved and the State Medical Examiner consent in writing. Each respective county involved shall be responsible for payment for the services given to that county by the chief CME or CMEI.

(5) Chief and deputy CME's and CMEI's shall attend the death investigation training school provided by the Mississippi Forensics Laboratory and

the State Medical Examiner, and shall successfully complete subsequent testing on the subject material by the State Medical Examiner at least once every four (4) years. Room, board and transportation expenses for attending the school shall be borne by the county in which the CME or CMEI is serving. In addition to the above training, the individual shall receive at least twenty-four (24) hours annually of continuing education as prescribed and certified by the State Medical Examiner. If the above requirements for training or continuing education are not met, the individual immediately shall be disqualified and removed from office as CME and/or CMEI. Reapplication for the office may be made the following year after removal.

HISTORY:

Laws, 1986, ch. 459, § 9; Laws, 1989, ch. 455, § 3; Laws, 1990, ch. 453, § 1; Laws, 2015, ch. 452, § 2, eff from and after July 1, 2015.

Cross References —

Application of this section to coroners elected in the 1987 general election and thereafter, see §§ 19-21-103 and 19-21-105.

Provision that coroners shall be elected in 1995 and every four years thereafter, see § 23-15-193.

Nominations for state, district, county, and county district offices which are elective, see §§ 23-15-291 et seq.

Determination of Death, see §§ 41-36-1 et seq.

Autopsies, see §§ 41-37-1 et seq.

Removal from office generally, see § 41-61-55.

Adoption, promulgation, amending, and repealing of rules and regulations applicable to this section, see § 41-61-59.

Authority for two or more adjacent counties to establish a regional medical examiner district, see § 41-61-77.

JUDICIAL DECISIONS

1. In general.

The defendant in a murder prosecution lacked standing to challenge technical compliance with autopsy procedure and, therefore, the physician who conducted the autopsy of the victim was properly permitted to testify. Evans v. State, 725 So. 2d 613, 1997 Miss. LEXIS 389 (Miss. 1997), cert. denied, 525 U.S. 1133, 119 S. Ct. 1097, 143 L. Ed. 2d 34, 1999 U.S. LEXIS 1510 (U.S. 1999).

OPINIONS OF THE ATTORNEY GENERAL

There is no statutory authority for county to employ secretary for county medical examiner. 1992 Miss. Op. Att'y Gen. 862.

A county board of supervisors cannot unilaterally appoint a deputy county medical examiner investigator after the county medical examiner investigator has been disqualified by the Office of State Medical Examiner; however, as government must continue to operate, until such time as the office of deputy county medical examiner investigator is properly filled, the board of supervisors may appoint an acting deputy or deputies. 2002 Miss. Op. Att'y Gen. 162.

The board of supervisors in a county with a population of more than 78,000 could appoint more than one deputy county medical examiner investigator. 2002 Miss. Op. Att'y Gen. 162.

RESEARCH REFERENCES

Am. Jur.

18 Am. Jur. 2d, Coroners or Medical Examiners §§ 1 et seq.

§ 41-61-59. Report of death to medical examiner; investigation of death; compensation of chief medical examiner or investigator.

(1) A person's death that affects the public interest as specified in subsection (2) of this section shall be promptly reported to the medical examiner by the physician in attendance, any hospital employee, any law enforcement officer having knowledge of the death, the embalmer or other funeral home employee, any emergency medical technician, any relative or any other person present. The appropriate medical examiner shall notify the municipal or state law enforcement agency or sheriff and take charge of the body. When the medical examiner has received notification under Section 41-39-15(6) that the deceased is medically suitable to be an organ and/or tissue donor, the medical examiner's authority over the body shall be subject to the provisions of Section 41-39-15(6). The appropriate medical examiner shall notify the Mississippi Bureau of Narcotics within twenty-four (24) hours of receipt of the body in cases of death as described in subsection (2)(m) or (n) of this section.

(2) A death affecting the public interest includes, but is not limited to, any of the following:

(a) Violent death, including homicidal, suicidal or accidental death.

(b) Death caused by thermal, chemical, electrical or radiation injury.

(c) Death caused by criminal abortion, including self-induced abortion, or abortion related to or by sexual abuse.

(d) Death related to disease thought to be virulent or contagious that may constitute a public hazard.

(e) Death that has occurred unexpectedly or from an unexplained cause.

(f) Death of a person confined in a prison, jail or correctional institution.

(g) Death of a person where a physician was not in attendance within thirty-six (36) hours preceding death, or in prediagnosed terminal or bedfast cases, within thirty (30) days preceding death.

(h) Death of a person where the body is not claimed by a relative or a friend.

(i) Death of a person where the identity of the deceased is unknown.

(j) Death of a child under the age of two (2) years where death results from an unknown cause or where the circumstances surrounding the death indicate that sudden infant death syndrome may be the cause of death.

(k) Where a body is brought into this state for disposal and there is reason to believe either that the death was not investigated properly or that there is not an adequate certificate of death.

(*l*) Where a person is presented to a hospital emergency room unconscious and/or unresponsive, with cardiopulmonary resuscitative measures being performed, and dies within twenty-four (24) hours of admission without regaining consciousness or responsiveness, unless a physician was in attendance within thirty-six (36) hours preceding presentation to the hospital, or in cases in which the decedent had a prediagnosed terminal or bedfast condition, unless a physician was in attendance within thirty (30) days preceding presentation to the hospital.

(m) Death that is caused by drug overdose or which is believed to be caused by drug overdose.

(n) When a stillborn fetus is delivered and the cause of the demise is medically believed to be from the use by the mother of any controlled substance as defined in Section 41-29-105.

(3) The State Medical Examiner is empowered to investigate deaths, under the authority hereinafter conferred, in any and all political subdivisions of the state. The county medical examiners and county medical examiner investigators, while appointed for a specific county, may serve other counties on a regular basis with written authorization by the State Medical Examiner, or may serve other counties on an as-needed basis upon the request of the ranking officer of the investigating law enforcement agency. If a death affecting the public interest takes place in a county other than the one where injuries or other substantial causal factors leading to the death have occurred, jurisdiction for investigation of the death may be transferred, by mutual agreement of the respective medical examiners of the counties involved, to the county where the injuries or other substantial causal factors occurred, and the costs of autopsy or other studies necessary to the further investigation of the death shall be borne by the county assuming jurisdiction.

(4) The chief county medical examiner or chief county medical examiner investigator may receive from the county in which he serves a salary of Nine Hundred Dollars ($900.00) per month, in addition to the fees specified in Sections 41-61-69 and 41-61-75, provided that no county shall pay the chief county medical examiner or chief county medical examiner investigator less than One Hundred Dollars ($100.00) per month as a salary, in addition to other compensation provided by law. In any county having one or more deputy medical examiners or deputy medical examiner investigators, each deputy may receive from the county in which he serves, in the discretion of the board of supervisors, a salary of not more than Nine Hundred Dollars ($900.00) per month, in addition to the fees specified in Sections 41-61-69 and 41-61-75. For this salary the chief shall assure twenty-four-hour daily and readily available death investigators for the county, and shall maintain copies of all medical examiner death investigations for the county for at least the previous five (5) years. He shall coordinate his office and duties and cooperate with the State Medical Examiner, and the State Medical Examiner shall cooperate with him.

HISTORY:

Laws, 1986, ch. 459, § 10; Laws, 1987, ch. 504; Laws, 1989, ch. 455, § 2; Laws, 1990, ch. 453, § 2; Laws, 1991, ch. 591, § 1; Laws, 1993, ch. 411, § 1; Laws, 1998, ch. 567, § 1; Laws, 2003, ch. 548, § 1; Laws, 2004, ch. 505, § 5; Laws, 2005, ch. 472, § 3; Laws, 2010, ch. 436, § 2; Laws, 2011, ch. 499, § 3, eff from and after July 1, 2011.

Editor's Notes —

On July 30, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws, 1998, ch. 567, § 1.

Laws of 2005, ch. 472, § 1 provides as follows:

"SECTION 1. This act shall be known and

may be cited as the "Lindsay Miller – Beth Finch Organ Recovery Act."

Section 41-39-15, referred to in (1), was repealed by Laws, 2008, ch. 561, § 26, effective from and after July 1, 2008. For present similar provisions, see 41-39-101 et seq.

Cross References —

Determination of death, see §§ 41-36-1 et seq.

Autopsies, see §§ 41-37-1 et seq.

Reports concerning deaths caused by motor vehicle accidents, see § 63-3-419.

JUDICIAL DECISIONS

1. In general.

Circuit court erred in denying an autopsy where the decedent's death was a violent one, and which affected the public interest such that a coroner's decision to order an autopsy was proper. Sanders v. Estate of Chamblee, 819 So. 2d 1275, 2002 Miss. LEXIS 201 (Miss. 2002).

The defendant in a murder prosecution lacked standing to challenge technical compliance with autopsy procedure and, therefore, the physician who conducted the autopsy of the victim was properly permitted to testify. Evans v. State, 725 So. 2d 613, 1997 Miss. LEXIS 389 (Miss. 1997), cert. denied, 525 U.S. 1133, 119 S. Ct. 1097, 143 L. Ed. 2d 34, 1999 U.S. LEXIS 1510 (U.S. 1999).

The county medical examiner ordered an autopsy on a passenger who died in a car wreck, especially in light of the public interest in prosecuting driver for a felony charge against him arising out of the accident. Hopson by & Through Hopson v. Meredith, 719 So. 2d 1176, 1998 Miss. LEXIS 380 (Miss. 1998).

OPINIONS OF THE ATTORNEY GENERAL

A crime scene never falls under the jurisdiction of the county medical examiner. However, the county medical examiner does have authority over a body at a crime scene where the death affects the public interest, pursuant to Section 41-61-59(1). See also, Section 41-61-61(1). 1995 Miss. Op. Att'y Gen. 90.

Under Section 41-61-61(1), the medical examiner of the county must be contacted promptly and with limited exception has exclusive jurisdiction over the body while it is at the crime scene, up and until the body is released to a law enforcement agency as directed by Section 41-61-59(1). 1995 Miss. Op. Att'y Gen. 90.

Based upon Section 41-61-59(3), jurisdiction to investigate a death is transferred from one county to another county only if there is a mutual agreement between the county medical examiners involved. If the medical examiners cannot reach an agreement to transfer jurisdiction, then the county where the death occurred retains jurisdiction to investigate the death. 1996 Miss. Op. Att'y Gen. 858.

Jurisdiction to investigate a death is transferred from one county to another only if there is a mutual agreement between the county medical examiners involved and, if they cannot reach an agreement, the county where the death occurred retains jurisdiction to investigate the death; thus, an examiner may store a dead body in a hospital morgue in another county and still retain jurisdiction over the body, but the examiner for the county where the dead body is stored may not obtain jurisdiction over the body merely because the body is being stored at a morgue in his county. 1998 Miss. Op. Att'y Gen. 34.

The statute requires a sheriff or any law enforcement officer having knowledge of a death that affects the public interest to notify the county medical examiner/coroner so that the coroner may take charge of the body. 2000 Miss. Op. Att'y Gen. 2.

If a patient in a nursing home dies under any of the circumstances listed in this section or under similarly related circumstances, the county medical examiner must be notified. 2002 Miss. Op. Att'y Gen. 577.

If a patient in a nursing home dies under any of the circumstances listed in this section or under similarly related circumstances, the county medical examiner must be notified and, pursuant to § 41-61-63(2)(a), a medical examiner has the authority to inspect and copy the medical records of a decedent whose death is under investigation. 2002 Miss. Op. Att'y Gen. 579.

No authority is found that prohibits a funeral home director from notifying anyone else about a suspicious death so long as the medical examiner is promptly notified. 2004 Miss. Op. Att'y Gen. 504.

No criminal statute is known that prohibits photographing a deceased body by anyone at a time a when a funeral home removes a body from the place of death and there is a question of suspicion of foul play. 2004 Miss. Op. Att'y Gen. 504.

RESEARCH REFERENCES

ALR.

Insurance: coroner's verdict or report as evidence on issue of suicide. 28 A.L.R.2d 352.

Reviewing, setting aside, or quashing of verdict at coroner's inquest. 78 A.L.R.2d 1218.

Necessity and effect, in homicide prosecution, of expert medical testimony as to cause of death. 65 A.L.R.3d 283.

Liability for wrongful autopsy. 18 A.L.R.4th 858.

Homicide: cremation of victim's body as violation of accused's rights. 70 A.L.R.4th 1091.

§ 41-61-60. Repealed.

Repealed by Laws, 1998, § 3, eff from and after October 1, 1998.
[Laws, 1993, ch. 550, § 9, eff from and after May 27, 1993]

Editor's Notes —

On July 30, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the repeal of this section by Laws of 1998, ch. 567, § 3.

§ 41-61-61. County medical examiner to be notified of death; disturbing body at scene of death; notification to State Medical Examiner; penalty for violations; transporting body to autopsy facility.

(1) Upon the death of any person where that death affects the public interest, the medical examiner of the county in which the body of the deceased is found or, if death occurs in a moving conveyance, where the conveyance stops and death is pronounced, shall be notified promptly by any person having knowledge or suspicion of such a death, as provided in subsection (1) of Section 41-61-59. The medical examiner shall then notify the State Medical Examiner, in accordance with Section 41-61-63(2)(a). No person shall disturb the body at the scene of such a death until authorized by the medical examiner, unless the medical examiner is unavailable and it is determined by an appropriate law enforcement officer that the presence of the body at the scene would risk the integrity of the body or provide a hazard to the safety of others. For the limited purposes of this section, expression of an opinion that death has occurred may be made by a nurse, an emergency medical technician, or any other competent person, in the absence of a physician.

(2) The discovery of anatomical material suspected of being part of the human body shall be promptly reported either (a) to the medical examiner of the county in which the material is found, who shall report the discovery to the State Medical Examiner, or (b) to the State Medical Examiner.

(3) A person who willfully moves, distributes or conceals a body or body part in violation of this section is guilty of a misdemeanor, and may be punished by a fine of not more than Five Hundred Dollars ($500.00), or by imprisonment for not more than six (6) months in the county jail, or by both such fine and imprisonment.

(4) Upon oral or written authorization of the medical examiner, if an autopsy is to be performed, the body shall be transported directly to an autopsy facility in a suitable secure conveyance, and the expenses of transportation shall be paid by the county for which the service is provided. The county may

contract with individuals or make available a vehicle to the medical examiner or law enforcement personnel for transportation of bodies.

HISTORY:

Laws, 1986, ch. 459, § 11; Laws, 2011, ch. 499, § 4, eff from and after July 1, 2011.

Cross References —

Determination of death, see §§ 41-36-1 et seq.

Autopsies, see §§ 41-37-1 et seq.

Adoption, promulgation, amending, and repealing of rules and regulations applicable to this section, see § 41-61-59.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

The defendant in a murder prosecution lacked standing to challenge technical compliance with autopsy procedure and, therefore, the physician who conducted the autopsy of the victim was properly permitted to testify. Evans v. State, 725 So. 2d 613, 1997 Miss. LEXIS 389 (Miss. 1997), cert. denied, 525 U.S. 1133, 119 S. Ct. 1097, 143 L. Ed. 2d 34, 1999 U.S. LEXIS 1510 (U.S. 1999).

OPINIONS OF THE ATTORNEY GENERAL

Board of Supervisors merely has option to either contract with individual other than County Medical Examiner Investigator to transport bodies in question or county may make vehicle available to County Medical Examiner Investigator or law enforcement for purpose of transporting bodies; statute does not grant Board of Supervisors authority to enter into contract with County Medical Examiner Investigator. 1990 Miss. Op. Att'y Gen. 198.

If no law enforcement officer is available, coroners as death investigators may seize and preserve evidence in furtherance of death investigation; coroners should carefully mark and maintain evidence of custody over illegal narcotics so seized until it can be turned over to proper law enforcement officers. Illegal narcotics may not be ordered destroyed by the coroner but should be turned over to proper law enforcement authority. 1992 Miss. Op. Att'y Gen. 721.

Under Miss. Code Section 41-61-61(4), coroner/county medical examiner investigator has authority to cause to be removed bodies which are to be autopsied, and county is obligated to pay expenses of such removal; however, county may contract with individuals or make available to medical examiner or law enforcement personnel vehicle for transportation of bodies. 1993 Miss. Op. Att'y Gen. 44.

A crime scene never falls under the jurisdiction of the county medical examiner. However, the county medical examiner does have authority over a body at a crime scene where the death affects the public interest, pursuant to Section 41-61-59(1). 1995 Miss. Op. Att'y Gen. 90.

Under Section 41-61-61(1), the medical examiner of the county must be contacted promptly and with limited exception has exclusive jurisdiction over the body while it is at the crime scene, up and until the body is released to a law enforcement agency as directed by Section 41-61-59(1). 1995 Miss. Op. Att'y Gen. 90.

Section 41-61-61 provides that the county should pay the expenses for the transportation of a body if an autopsy is to be performed. However, the statutes are silent as to transportation of bodies when no autopsy is to be performed. 1996 Miss. Op. Att'y Gen. 586.

The discovery of any human bones should promptly be reported to the county medical examiner or the State Medical Examiner. 2000 Miss. Op. Att'y Gen. 2.

RESEARCH REFERENCES

ALR.

Insurance: coroner's verdict or report as evidence on issue of suicide. 28 A.L.R.2d 352.

Reviewing, setting aside, or quashing of verdict at coroner's inquest. 78 A.L.R.2d 1218.

Homicide: cremation of victim's body as violation of accused's rights. 70 A.L.R.4th 1091.

§ 41-61-63. Duties of State Medical Examiner; completion of death certificate; medical examiner not to favor particular funeral homes.

(1) The State Medical Examiner shall:

(a) Provide assistance, consultation and training to county medical examiners, county medical examiner investigators and law enforcement officials.

(b) Keep complete records of all relevant information concerning deaths or crimes requiring investigation by the medical examiners.

(c) Promulgate rules and regulations regarding the manner and techniques to be employed while conducting autopsies; the nature, character and extent of investigations to be made into deaths affecting the public interest to allow a medical examiner to render a full and complete analysis and report; the format and matters to be contained in all reports rendered by the medical examiners; and all other things necessary to carry out the purposes of Sections 41-61-51 through 41-61-79. The State Medical Examiner shall make such amendments to these rules and regulations as may be necessary. All medical examiners, coroners and law enforcement officers shall be subject to such rules.

(d) Cooperate with the crime detection and medical examiner laboratories authorized by Section 45-1-17, the University of Mississippi Medical Center, the Attorney General, law enforcement agencies, the courts and the State of Mississippi.

(2) In addition, the medical examiners shall:

(a) Upon receipt of notification of a death affecting the public interest, make inquiries regarding the cause and manner of death, reduce the findings to writing and promptly make a full report to the State Medical Examiner on forms prescribed for that purpose. The medical examiner shall be authorized to inspect and copy the medical reports of the decedent whose death is under investigation. However, the records copied shall be maintained as confidential so as to protect the doctor/patient privilege. The medical examiners shall be authorized to request the issuance of subpoenas, through the proper court, for the attendance of persons and for the production of documents as may be required by their investigation.

(b) Complete the medical examiner's portion of the certificate of death within seventy-two (72) hours of assuming jurisdiction over a death, and forward the certificate to the funeral director or to the family. The medical examiner's portion of the certificate of death shall include the decedent's name, the date and time of death, the cause of death and the certifier's signature. If determination of the cause and/or manner of death are pending an autopsy or toxicological or other studies, these sections on the certificate may be marked "pending," with amendment and completion to follow the completion of the postmortem studies. The State Medical Examiner shall be authorized to amend a death certificate; however, the State Medical Examiner is not authorized to change or amend any death certificate after he has resigned or been removed from his office as the State Medical Examiner. Where an attending physician refuses to sign a certificate of death, or in case of any death, the State Medical Examiner or properly qualified designee may sign the death certificate.

(c) Cooperate with other agencies as provided for the State Medical Examiner in subsection (1)(d) of this section.

(d) In all investigations of deaths affecting the public interest where an autopsy will not be performed, obtain or attempt to obtain postmortem blood, urine and/or vitreous fluids. Medical examiners may also obtain rectal temperature measurements, known hair samples, radiographs, gunshot residue/wiping studies, fingerprints, palm prints and other noninvasive studies as the case warrants and/or as directed by the State Medical Examiner. Decisions shall be made in consultation with investigating law enforcement officials and/or the State Medical Examiner. The cost of all studies not performed by the Mississippi Forensics Laboratory shall be borne by the county. County medical examiner investigators shall be authorized to obtain these postmortem specimens themselves following successful completion of the death investigation training school.

(e) In all investigations of deaths occurring in the manner specified in subsection (2)(j) of Section 41-61-59, a death investigation shall be performed by the medical examiners in accordance with the child death investigation protocol established by the State Medical Examiner. The results of the death investigation shall be reported to the State Medical Examiner on forms prescribed for that purpose by the State Medical Examiner and to appropriate authorities, including police and child protective services, within three (3) days of the conclusion of the death investigation.

(3) The medical examiner shall not use his position or authority to favor any particular funeral home or funeral homes.

HISTORY:

Laws, 1986, ch. 459, § 12; Laws, 1987, ch. 483, § 30; Laws, 1988, ch. 442, § 27; Laws, 1989, ch. 537, § 26; Laws, 1990, ch. 518, § 27; Laws, 1991, ch. 618, § 26; Laws, 1992, ch. 491 § 28; Laws, 1996, ch. 485, § 1; Laws, 2003, ch. 383, § 1; Laws, 2011, ch. 499, § 5; Laws, 2015, ch. 452, § 3, eff from and after July 1, 2015.

Cross References —

Determination of death, see §§ 41-36-1 et seq.

Autopsies, see §§ 41-37-1 et seq.

Adoption, promulgation, amending, and repealing of rules and regulations applicable to this section, see § 41-61-59.

Duty of the State Medical Examiner to investigate a death of a person on the premises of a correctional system, see § 47-5-151.

JUDICIAL DECISIONS

1. In general.

Only purpose for taking the bodily fluids was to help determine the cause of death; there was no prosecutorial purpose mentioned, and the record was devoid of any conceivable postmortem privacy interest the decedent could have which outweighed the public interest in determining the circumstances surrounding the decedent's accidental death. Sanders v. Estate of Chamblee, 819 So. 2d 1275, 2002 Miss. LEXIS 201 (Miss. 2002).

OPINIONS OF THE ATTORNEY GENERAL

State Department of Health/HIV/AIDS Prevention Program must provide state Medical Examiner's Office with medical information regarding whether or not victims who die and fall under Examiner's jurisdiction for investigation and certification, are HIV carriers or suspected HIV carriers. 1992 Miss. Op. Att'y Gen. 651.

Under Miss. Code Section 41-61-63(2)(a), medical examiner is authorized to inspect and copy medical reports of decedent whose death is under investigation, with such authority encompassing cases of deaths affecting public interest as defined by Miss. Code Section 41-61-59. 1993 Miss. Op. Att'y Gen. 838.

"Medical reports" under Miss. Code Section 41-61-63 include any reports or other documents supplied by hospital, doctor, nurse or other health professional, who has had contact with patient, but do not include summations or other reports prepared by Department of Health personnel. 1993 Miss. Op. Att'y Gen. 838.

Miss. Code Section 41-61-63(2)(a) authorizes medical examiners to request issuance of subpoenas, through proper court, for production of documents as may be required by their investigation; therefore, documents not accessible as "medical reports" could be obtained by medical examiners upon showing to court that such documents were required in investigations. 1993 Miss. Op. Att'y Gen. 838.

Medical form which includes reportable diseases is not "medical record" within meaning of Miss. Code Section 41-61-63, and is, therefore, not available to medical examiners without subpoena issued by proper court. 1993 Miss. Op. Att'y Gen. 84.

Medical examiner is authorized to obtain medical records of deceased from treating physician or hospital without necessity of subpoena, but medical examiner investigator may obtain subpoena to compel production of medical records. 1994 Miss. Op. Att'y Gen. 947.

A county medical examiner only has the responsibility of completing the death certificate after assuming jurisdiction over a death. 2000 Miss. Op. Att'y Gen. 2.

RESEARCH REFERENCES

ALR.

Official death certificate as evidence of cause of death in civil or criminal action. 21 A.L.R.3d 418.

Liability for wrongful autopsy. 18 A.L.R.4th 858.

Homicide: cremation of victim's body as violation of accused's rights. 70 A.L.R.4th 1091.

§ 41-61-65. Autopsy; reports; immunity from liability; review of determination.

(1) If, in the opinion of the medical examiner investigating the case, it is advisable and in the public interest that an autopsy or other study be made for the purpose of determining the primary and/or contributing cause of death, an autopsy or other study shall be made by the State Medical Examiner, or the State Medical Examiner may choose a competent pathologist who is designated by the State Medical Examiner or the Department of Public Safety as a pathologist qualified to perform postmortem examinations and autopsies to perform the autopsy or study. To be eligible to be designated under this section, a pathologist must be an M.D. or D.O. who is certified in forensic pathology by the American Board of Pathology unless a certified forensic pathologist is not available to perform a postmortem examination or autopsy within a reasonable time. The State Medical Examiner or designated pathologist may retain any tissues as needed for further postmortem studies or documentation. When the medical examiner has received notification under Section 41-39-15(6) that the

deceased is medically suitable to be an organ and/or tissue donor, the State Medical Examiner or designated pathologist may retain any biopsy or medically approved sample of the organ and/or tissue in accordance with the provisions of Section 41-39-15(6). A complete autopsy report of findings and interpretations, prepared on forms designated for this purpose, shall be submitted promptly to the State Medical Examiner. Copies of the report shall be furnished to the authorizing medical examiner, district attorney and court clerk. A copy of the report shall be furnished to one (1) adult member of the immediate family of the deceased or the legal representative or legal guardian of members of the immediate family of the deceased upon request. In determining the need for an autopsy, the medical examiner may consider the request from the district attorney or county prosecuting attorney, law enforcement or other public officials or private persons. However, if the death occurred in the manner specified in subsection (2)(j) of Section 41-61-59, an autopsy shall be performed by the State Medical Examiner or a designated pathologist who is qualified as required by this subsection, and the report of findings shall be forwarded promptly to the State Medical Examiner, investigating medical examiner, the State Department of Health, the infant's attending physician and the local sudden infant death syndrome coordinator.

(2) Any medical examiner or duly licensed physician performing authorized investigations and/or autopsies as provided in Sections 41-61-51 through 41-61-79 who, in good faith, complies with the provisions of Sections 41-61-51 through 41-61-79 in the determination of the cause and/or manner of death for the purpose of certification of that death, shall not be liable for damages on account thereof, and shall be immune from any civil liability that might otherwise be incurred or imposed.

(3) Family members or others who disagree with the medical examiner's determination shall be able to petition and present written argument to the State Medical Examiner for further review. If the petitioner still disagrees, he may petition the circuit court, which may, in its discretion, hold a formal hearing. In all those proceedings, the State Medical Examiner and the county medical examiner or county medical examiner investigator who certified the information shall be made defendants. All costs of the petition and hearing shall be borne by the petitioner.

HISTORY:

Laws, 1986, ch. 459, § 13; Laws, 1990, ch. 484, § 1; Laws, 2002, ch. 424, § 2; Laws, 2003, ch. 383, § 2; Laws, 2005, ch. 472, § 4; Laws, 2010, ch. 436, § 1; Laws, 2011, ch. 499, § 6, eff from and after July 1, 2011.

Editor's Notes —

Laws of 2005, ch. 472, § 1 provides as follows:

"SECTION 1. This act shall be known and may be cited as the "Lindsay Miller – Beth Finch Organ Recovery Act."

Section 41-39-15, referred to in (1), was repealed by Laws of 2008, ch. 561, § 26, effective from and after July 1, 2008. For present similar provisions, see §§ 41-39-101 et seq.

Cross References —

Determination of death, see §§ 41-36-1 et seq.

Autopsies, see §§ 41-37-1 et seq.

Corrections and amendments to death certificates, see § 41-57-13.

Adoption, promulgation, amending, and repealing of rules and regulations applicable to this section, see § 41-61-59.

Fees of a pathologist performing an autopsy, see § 41-61-75.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Jurisdiction.

1. In general.

Legislature did not intend that a deceased person's burial be delayed indefinitely while his next-of-kin pursued administrative hearings with a state agency; among the factors which might justify a pulling away from the requirement of exhaustion was one where the expense and awkwardness of the administrative proceedings as compared with inexpensive and efficient judicial disposition of the controversy. Sanders v. Estate of Chamblee, 819 So. 2d 1275, 2002 Miss. LEXIS 201 (Miss. 2002).

The defendant in a murder prosecution lacked standing to challenge technical compliance with autopsy procedure and, therefore, the physician who conducted the autopsy of the victim was properly permitted to testify. Evans v. State, 725 So. 2d 613, 1997 Miss. LEXIS 389 (Miss. 1997), cert. denied, 525 U.S. 1133, 119 S. Ct. 1097, 143 L. Ed. 2d 34, 1999 U.S. LEXIS 1510 (U.S. 1999).

Statutory immunity of § 41-61-65(2) does not extend to alleged abuse of process by assistant state medical examiner because immunity does not extend to intentional torts, therefore assistant medical examiner's claim that he was fraudulently joined as defendant to preclude removal to federal court on basis of diversity jurisdiction was unfounded. Laughlin v. Prudential Ins. Co., 882 F.2d 187, 1989 U.S. App. LEXIS 13277 (5th Cir. Miss. 1989).

2. Jurisdiction.

The circuit court has jurisdiction over family members' petitions from the county medical examiner's decision to perform an autopsy. Hopson by & Through Hopson v. Meredith, 719 So. 2d 1176, 1998 Miss. LEXIS 380 (Miss. 1998).

OPINIONS OF THE ATTORNEY GENERAL

Only state medical examiner or designated pathologist may perform autopsies for state or county. 1992 Miss. Op. Att'y Gen. 784.

Pursuant to Section 41-61-65(1) the State Medical Examiner has discretion in releasing or transferring any tissues from autopsies that are on file with the State Medical Examiner's Office. 1996 Miss. Op. Att'y Gen. 290.

The statute gave the State Medical Examiner the authority to enter into a research project as proposed in a letter. 1998 Miss. Op. Att'y Gen. 713.

There is no statutory provision prohibiting the release of autopsy findings to a facility of the Department of Mental Health, in whose custody the patient died. 2004 Miss. Op. Att'y Gen. 161.

RESEARCH REFERENCES

ALR.

Time for making autopsy or demand therefor under insurance policy. 30 A.L.R.2d 837.

Liability for wrongful autopsy. 18 A.L.R.4th 858.

Homicide: cremation of victim's body as violation of accused's rights. 70 A.L.R.4th 1091.

Am. Jur.

23 Am. Jur. 2d, Depositions and Discovery § 271.

5A Am. Jur. Legal Forms 2d, Coroners and Medical Examiners, § 73:14 (request to have autopsy performed – indemnification of authorized officer).

5A Am. Jur. Legal Forms 2d, Coroners and Medical Examiners, § 73:14 (report of inquest by coroner's or medical examiner's jury).

7 Am. Jur. Legal Forms 2d, Dead Bodies, § 84:64 (authorization for autopsy).

2 Am. Jur. Proof of Facts, Autopsy, Proof No. 1 (complete autopsy – death due to spinal concussion – testimony of physician (pathologist)).

12 Am. Jur. Proof of Facts, Suicide Proof No. 2 (death by suicide – testimony of autopsy surgeon).

§ 41-61-67. Disinterment; costs; petition for order of exhumation.

(1) In any case of death where the body is or has been buried without investigation by a medical examiner as to the cause and manner of death, or where sufficient cause develops for further investigation after a body has been

buried as determined by a medical examiner, the State Medical Examiner shall authorize an investigation and send a report of the investigation with recommendations to the appropriate district attorney. The district attorney may forward the report to the circuit court having jurisdiction of the matter and petition the court for disinterment. The circuit judge may order that the body be exhumed and that an autopsy be performed by the State Medical Examiner. A report of the autopsy and other pathological studies shall be delivered to the judge. However, in cases of suspected homicide, the State Medical Examiner shall be able to authorize disinterment for the purposes of autopsy. The cost of the exhumation, autopsy, transportation and disposition of the body shall be paid by the county for which the service is provided.

(2) Any person may petition the circuit court for an order of exhumation. Upon a showing of sufficient cause, the court may order the body exhumed. The cost incurred shall be assigned to the petitioner.

HISTORY:

Laws, 1986, ch. 459, § 14, eff from and after July 1, 1986.

Cross References —

Determination of death, see §§ 41-36-1 et seq.

Autopsies, see §§ 41-37-1 et seq.

Adoption, promulgation, amending, and repealing of rules and regulations applicable to this section, see § 41-61-59.

JUDICIAL DECISIONS

1. Illustrative cases.

In a murder trial, defense counsel was provided with autopsy photos, blood and urine samples, and the gunshot residue kit. Further, after a first motion was held in abeyance, defendant failed to renew defendant's motion to exhume the victim's body in order for the body to be examined by an independent expert of defendant's choosing; based on the record, defendant's petition failed to sufficiently show cause for an exhumation. Ross v. State, 883 So. 2d 1181, 2004 Miss. App. LEXIS 557 (Miss. Ct. App.), cert. denied, 883 So. 2d 1180, 2004 Miss. LEXIS 1274 (Miss. 2004).

OPINIONS OF THE ATTORNEY GENERAL

State Medical Examiner may authorize exhumation of body without court order in cases of suspected homicide for purpose of autopsy but where district attorney has petitioned circuit court for order allowing body to be disinterred and circuit judge has denied that petition in written order, authority of State Medical Examiner in matter would cease. 1993 Miss. Op. Att'y Gen. 361.

RESEARCH REFERENCES

ALR.

Removal and reinterment of remains. 21 A.L.R.2d 472.

Power of court to order disinterment and autopsy or examination for evidential purposes in civil case. 21 A.L.R.2d 538.

Reviewing, setting aside, or quashing of verdict at coroner's inquest. 78 A.L.R.2d 1218.

Disinterment in criminal cases. 63 A.L.R.3d 1294.

Homicide: cremation of victim's body as violation of accused's rights. 70 A.L.R.4th 1091.

Am. Jur.

22A Am. Jur. 2d, Dead Bodies §§ 50, 54. 56-58, 75.

§ 41-61-69. Disposition of body without permission of medical examiner; penalties; disposal of body at sea.

(1) No person knowing or having reason to know that a death may be under the jurisdiction of the medical examiner shall embalm, bury or cremate the body without the permission of the medical examiner. Any person violating the provisions of this section shall be guilty of a misdemeanor, and may be punished by a fine of not more than Five Hundred Dollars ($500.00), or by imprisonment for not more than six (6) months in the county jail, or by both such fine and imprisonment.

(2) A dead body shall not be cremated or buried at sea unless a medical examiner certifies that he has been informed of or inquired into the cause and the manner of death and has the opinion that no further examination is necessary. This subsection shall not apply to deaths occurring less than twenty-four (24) hours after birth or to death of patient resulting only from natural disease and occurring in a licensed hospital unless the death falls within the jurisdiction of the medical examiner. The State Medical Examiner shall be authorized to adopt rules creating additional exceptions to this subsection. For making this certification, the medical examiner or his deputy shall be entitled to charge a fee of Twenty-five Dollars ($25.00), to be paid by the applicant, unless such medical examiner or his deputy has filed a written report of such death as provided in Section 41-61-73, Mississippi Code of 1972, and received a fee therefor paid by the county.

HISTORY:

Laws, 1986, ch. 459, § 15; Laws, 1990, ch. 453, § 3; Laws, 1993, ch. 411, § 2, eff from and after July 1, 1993.

Editor's Notes —

Section 41-61-73, referred to in (2), was repealed by Laws, 1991, ch. 573, § 141, eff from and after July 1, 1991.

Cross References —

Determination of death, see §§ 41-36-1 et seq.

Autopsies, see §§ 41-37-1 et seq.

Disposition of human bodies or parts, see §§ 41-39-1 et seq.

Application of this section to a deputy, see § 41-61-57.

Right of the chief medical examiner or chief county medical examiner investigator to receive a salary in addition to the fees specified in this section, see § 41-61-59.

Adoption, promulgation, amending, and repealing of rules and regulations applicable to this section, see § 41-61-59.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

OPINIONS OF THE ATTORNEY GENERAL

The statute only applies if a body has been embalmed, buried, or cremated without the permission of the county medical examiner and the death is one under his jurisdiction. 2000 Miss. Op. Att'y Gen. 2.

RESEARCH REFERENCES

ALR.

Liability in damages for withholding corpse from relatives. 48 A.L.R.3d 240.

Liability for wrongful autopsy. 18 A.L.R.4th 858.

Homicide: cremation of victim's body as violation of accused's rights. 70 A.L.R.4th 1091.

§ 41-61-71. Repealed.

Repealed by Laws, 2005, ch. 472, § 6, effective from and after July 1, 2005. [Laws, 1986, ch. 459, § 16, eff from and after July 1, 1986.]

Editor's Notes —

Laws of 2005, ch. 472, § 1 provides as follows:

"SECTION 1. This act shall be known and may be cited as the "Lindsay Miller – Beth Finch Organ Recovery Act."

Former § 41-61-71 set forth a procedure for obtaining corneal tissue, pituitary glands and other tissues from decedent for transplant utilization and for receiving consent from next of kin.

§ 41-61-73. Repealed.

Repealed by Laws, 1991, ch. 573, § 141, eff from and after July 1, 1991. [Laws, 1986, ch. 459, § 17; 1990, ch. 453, § 4]

Editor's Notes —

Former Section 41-61-73 provided for the confidentiality of certain reports of investigations, examinations and autopsies, prescribed who could have access to such reports, specified penalties for violations, provided for their admissibility into evidence, and excluded certain of these reports from Public Records Act.

§ 41-61-75. Fees; expert witness; expenses; SIDS/Child Death Scene Investigation reports [Repealed effective July 1, 2020].

(1) For each investigation with the preparation and submission of the required reports, the following fees shall be billed to and paid by the county for which the service is provided:

(a) A medical examiner or his deputy shall receive One Hundred Twenty-five Dollars ($125.00) for each completed report of investigation of death, plus the examiner's actual expenses. In addition to that fee, in cases where the cause of death was sudden infant death syndrome (SIDS) and the medical examiner provides a SIDS Death Scene Investigation report, the medical examiner shall receive for completing that report an additional Fifty Dollars ($50.00), or an additional One Hundred Dollars ($100.00) if the medical examiner has received advanced training in child death investigations and presents to the county a certificate of completion of that advanced training. The State Medical Examiner shall develop and prescribe a uniform format and list of matters to be contained in SIDS/Child Death Scene Investigation reports, which shall be used by all county medical examiners and county medical examiner investigators in the state.

(b) The pathologist performing autopsies as provided in Section 41-61-65 shall receive One Thousand Dollars ($1,000.00) per completed autopsy, plus mileage expenses to and from the site of the autopsy, and shall be reimbursed for any out-of-pocket expenses for third-party testing, not to exceed One Hundred Dollars ($100.00) per autopsy.

(2) Any medical examiner, physician or pathologist who is subpoenaed for appearance and testimony before a grand jury, courtroom trial or deposition shall be entitled to an expert witness hourly fee to be set by the court and mileage expenses to and from the site of the testimony, and such amount shall be paid by the jurisdiction or party issuing the subpoena.

(3) This section shall stand repealed on July 1, 2020.

HISTORY:

Laws, 1986, ch. 459, § 18; Laws, 1990, ch. 453, § 5; Laws, 1991, ch. 591, § 2; Laws, 1993, ch. 411, § 3; Laws, 1998, ch. 567, § 2; Laws, 2007, ch. 367, § 1; Laws, 2008, ch. 362, § 1; reenacted and amended, Laws, 2011, ch. 497, § 1; Laws, 2014, ch. 440, § 1; Laws, 2017, ch. 313, § 1, eff from and after July 1, 2017.

Editor's Notes —

On July 30, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws, 1998, ch. 567, § 2.

Laws of 2007, ch. 367, § 2, as amended by Laws of 2011, ch. 497, § 2, which deleted the repealer that would have become effective on June 30, 2011, provides as follows:

"SECTION 2. This act shall take effect and be in force from and after October 1, 2007."

On July 15, 2008, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2008, ch. 362, § 1.

Amendment Notes —

The 2017 amendment extended the date of the repealer for this section by substituting "July 1, 2020" for "July 1, 2017" in (3).

Cross References —

Right of a deputy to receive fees under the provisions of this section, see § 41-61-57.

Right of the chief medical examiner or chief county medical examiner investigator to receive a salary in addition to the fees specified in this section, see § 41-61-59.

Adoption, promulgation, amending, and repealing of rules and regulations applicable to this section, see § 41-61-59.

OPINIONS OF THE ATTORNEY GENERAL

Section 41-61-75 allows for a medical examiner to receive payment for mileage reasonably incurred as a direct result of an investigation of a death. 1996 Miss. Op. Att'y Gen. 828.

The payments provided for in subsection (1) are "direct payments for services rendered" by the coroner to the county, and the board of supervisors is authorized to pay the matching employer's contributions out of county general funds. Robinson, Feb, 9, 2001, A.G. Op. #2000-9658.

RESEARCH REFERENCES

ALR.

Necessity and effect, in homicide prosecution, of expert medical testimony as to cause of death. 65 A.L.R.3d 283.

Admissibility of expert or opinion testimony concerning identification of skeletal remains. 18 A.L.R.4th 1294.

Am. Jur.

31A Am. Jur. 2d, Expert and Opinion Evidence §§ 157, 158, 166-168, 170.

§ 41-61-77. Central office for Mississippi Forensics Laboratory and State Medical Examiner; use of private facilities for investigating deaths; personnel; pathologists.

(1) The Department of Public Safety shall establish and maintain a central office for the Mississippi Forensics Laboratory and the State Medical Examiner with appropriate facilities and personnel for postmortem medicolegal examinations. District offices, with appropriate facilities and personnel, may also be established and maintained if considered necessary by the department for the proper management of postmortem examinations.

The facilities of the central and district offices and their staff services may be available to the medical examiners and designated pathologists in their investigations.

(2) In order to provide proper facilities for investigating deaths as authorized in Sections 41-61-51 through 41-61-79, the State Medical Examiner may arrange for the use of existing public or private laboratory facilities. The State Medical Examiner may contract with qualified persons to perform or to provide support services for autopsies, studies and investigations not inconsistent with other applicable laws. Such laboratory facilities may be located at the University of Mississippi Medical Center or any other suitable location. The State Medical Examiner may be an affiliate or regular faculty member of the Department of Pathology at the University of Mississippi Medical Center and may serve as a member of the faculty of other institutions of higher learning. He shall be authorized to employ, with the approval of the Commissioner of Public Safety, such additional scientific, technical, administrative and clerical assistants as are necessary for performance of his duties. Such employees in the office of the State Medical Examiner shall be subject to the rules, regulations and policies of the state personnel system in their employment.

(3) The State Medical Examiner shall be authorized to appoint and/or employ qualified pathologists as additional associate and assistant state medical examiners as are necessary to carry out the duties of his office. The associate and assistant state medical examiners shall be licensed to practice medicine in Mississippi and, insofar as practicable, shall be trained in the field of forensic pathology. The State Medical Examiner may delegate specific duties to competent and qualified medical examiners within the scope of the express authority granted to him by law or regulation. Employees of the Office of the State Medical Examiner shall have the authority to enter any political subdivisions of this state for the purpose of carrying out medical investigations.

HISTORY:

Laws, 1986, ch. 459, § 19; Laws, 1989, ch. 455, § 1; Laws, 2010, ch. 436, § 3; Laws, 2011, ch. 499, § 7; Laws, 2015, ch. 452, § 4, eff from and after July 1, 2015.

Editor's Notes —

Laws of 2015, ch. 452, § 21, provides:

"SECTION 21. The Mississippi Forensics Laboratory shall continue to use stationery and other supplies bearing the designation of 'Mississippi Crime Laboratory' until depleted, and the name affixed on a building or property shall remain until replacement due to normal wear or other cause."

Cross References —

Determination of death, see §§ 41-36-1 et seq.

Autopsies, see §§ 41-37-1 et seq.

Authority for regional county medical examiner to serve other counties which are parties to the regional agreement and to contract with counties not a party to the agreement, see § 41-61-59.

OPINIONS OF THE ATTORNEY GENERAL

Whenever studies appear to be necessary, State Medical Examiner should be contacted and facilities of State which are available should be utilized to fullest extent possible; if any additional experts outside State Medical Examiner's office are required to do special scientific studies, such experts should be engaged and contracted with, by or under direction of State Medical Examiner; expense of any "extra" work would be in addition to $400.00 paid pursuant to statute. 1990 Miss. Op. Att'y Gen. 235.

The statute authorizes the State Medical Examiner's Office to allow designated state pathologists to utilize the state morgue facility for postmortem examinations and investigations; although there is no authority for the State Medical Examiner's Office to charge a fee for such use, it may require reimbursement of the costs of using the facility, equipment, and supplies. 2000 Miss. Op. Att'y Gen. 196.

RESEARCH REFERENCES

ALR.

Liability for wrongful autopsy. 18 A.L.R.4th 858.

§ 41-61-79. Radio system; pager/beeper; morgue or morgue facility; photographic equipment; vehicle; costs.

(1) The county medical examiner, county medical examiner investigator or deputies thereof may be furnished by the board of supervisors of the county:

(a) A two-way radio for countywide communication, using similar frequencies to those used by the sheriff. The responsibility for the installation, maintenance and removal of such equipment may be vested in the sheriff by the board of supervisors.

(b) A pager/beeper which can be employed countywide.

(c) A morgue or morgue facilities with proper examination equipment as directed by the State Medical Examiner. The facility may be at a hospital, funeral home or other suitable location. The county may contract with an individual or establishment to provide these facilities.

(d) A camera suitable for crime-scene or death-scene photography, plus film and processing.

(e) Body bags and cloth sheets, as needed.

(2) The county medical examiner or county medical examiner investigator may be furnished by the board of supervisors of the county with:

(a) A vehicle.

(b) Any other equipment, facilities or personnel deemed necessary by the medical examiners and by the board of supervisors of that county.

(3) The vehicle used by a medical examiner in the performance of his duties shall be considered to be an emergency vehicle and may be equipped with standard emergency flashing lights, siren and a two-way radio for countywide communication, using similar frequencies to those used by the County Emergency Communications District.

(4) The costs of any equipment or facilities purchased and the compensation of any persons employed under the authority of this section shall be paid from the general county fund or any other funds which may be made available to the board of supervisors for such purchases or employment of personnel.

HISTORY:

Laws, 1986, ch. 459, § 20; Laws, 1990, ch. 453, § 6; Laws, 2009, ch. 432, § 1, eff from and after July 1, 2009.

Cross References —

Adoption, promulgation, amending, and repealing of rules and regulations applicable to this section, see § 41-61-59.

OPINIONS OF THE ATTORNEY GENERAL

Board of supervisors is allowed to compensate individual or establishment for use of their facilities when said facilities are used in conducting of autopsies. 1990 Miss. Op. Att'y Gen. 704.

CHAPTER 63.

EVALUATION AND REVIEW OF PROFESSIONAL HEALTH SERVICES PROVIDERS

Sec.
41-63-1. Definitions.
41-63-3. Authority to establish medical or dental review committees; purposes of committees; certain medical and dental information may be furnished for evaluation and improvement of quality and efficiency of medical or dental care.
41-63-4. Department of Health to design and establish registry program of the condition and treatment of persons seeking medical care; rules, regulations and procedures governing program; State Health Data Advisory Committee established; types of information provided to registry; confidentiality of information; penalties for knowing or negligent release of data in violation of this section; penalties for failure to provide data; fees and charges.
41-63-5. Immunity from liability of furnishers of medical or dental information and of members of review committees for action taken.
41-63-7. Confidentiality of names of patients studied.
41-63-9. Discoverability and admissibility into evidence of proceedings and records of review committees.
41-63-21. Accreditation and quality assurance materials of health-care organizations; definition; confidentiality of materials generally.
41-63-23. Accreditation and quality assurance materials of health-care organizations; discovery or introduction into evidence in civil actions; admissibility of testimony relating to preparation, evaluation or review of materials; admissibility of documents from original sources.
41-63-25. Accreditation and quality assurance materials of health-care organizations; use of materials in proceedings relating to restriction or revocation of physician's license.
41-63-27. Construction of Sections 41-63-21 through 41-63-29 with Mississippi Rules of Civil Procedure and Evidence.
41-63-29. Effect and purpose of Sections 41-63-21 through 41-63-29.

§ 41-63-1. Definitions.

(1) The terms "medical or dental review committee" or "committee," when used in this chapter, shall mean a committee of a state or local professional medical, nursing, pharmacy or dental society or a licensed hospital, nursing home or other health-care facility, or of a medical, nursing, pharmacy or dental staff or a licensed hospital, nursing home or other health-care facility or of a medical care foundation or health maintenance organization, preferred provider organization, individual practice association, any ambulance service or other prehospital emergency response agency, or any trauma improvement committee established at a licensed hospital designated as a trauma care facility by the Mississippi State Department of Health, Emergency Medical Services program, or any regional or state committee designated by the Mississippi State Department of Health, Emergency Medical Services program, and which participates in the trauma care system, or similar entity, the function of which, or one (1) of the functions of which, is to evaluate and improve the quality of health care rendered by providers of health-care service, to evaluate the competence or practice of physicians or other health-care practitioners, or to determine that health-care services rendered were profes-

sionally indicated or were performed in compliance with the applicable standard of care or that the cost of health care rendered was considered reasonable by the providers of professional health-care services in the area and includes a committee functioning as a utilization review committee, a utilization or quality control peer review organization, or a similar committee or a committee of similar purpose, and the governing body of any licensed hospital while considering a recommendation or decision concerning a physician's competence, conduct, staff membership or clinical privileges.

(2) The term "proceedings" means all reviews, meetings, conversations, and communications of any medical or dental review committee.

(3) The term "records" shall mean any and all committee minutes, transcripts, applications, correspondence, incident reports, and other documents created, received or reviewed by or for any medical or dental review committee.

HISTORY:

Laws, 1977, ch. 346, § 1; Laws, 1984, ch. 464, § 1; Laws, 1994, ch. 524, § 1; Laws, 1998, ch. 429, § 6; Laws, 2006, ch. 394, § 1, eff from and after July 1, 2006.

§ 41-63-3. Authority to establish medical or dental review committees; purposes of committees; certain medical and dental information may be furnished for evaluation and improvement of quality and efficiency of medical or dental care.

(1) Any hospital, medical staff, state or local professional medical, pharmacy or dental society, nursing home, health maintenance organization, medical care foundation, preferred provider organization or other health-care facility is authorized to establish medical or dental review committees one of the purposes of which may be to evaluate or review the diagnosis or treatment or the performance or rendition of medical or hospital services, to evaluate or improve the quality of health care rendered by providers of health-care service, to determine that health-care services rendered were professionally indicated or were performed in compliance with the applicable standard of care or that the cost of health care rendered was considered reasonable under the circumstances.

(2) Any person, professional group, hospital, sanatorium, extended care facility, skilled nursing home, intermediate care facility or other health-care facility or organization may provide medical or dental information, reports or other data relating to the condition and treatment of any person to the Mississippi Hospital Association, Mississippi State Medical Association, Mississippi Medical and Surgical Association, Mississippi Dental Association, Mississippi State Pharmaceutical Association, Division of Medicaid, any allied medical or dental organization or any duly authorized medical or dental review committee, to be used in the evaluation and improvement of the quality and efficiency of medical or dental care provided in such medical, dental or health-care facility, including care rendered at the private office of a physician or dentist. Such data and records shall not divulge the identity of any patient.

HISTORY:
Laws, 1977, ch. 346, § 2; Laws, 1984, ch. 464, § 2; Laws, 1994, ch. 524, § 2; Laws, 2002, ch. 438, § 2, eff from and after July 1, 2002.

JUDICIAL DECISIONS

1. Defamation action.
Summary judgment for defendants was proper in a physician's defamation action against a tire company and a professional services review company, engaged pursuant to Miss. Code Ann. § 41-63-3, regarding reports questioning the necessity of certain medical procedures performed by the physician because a qualified privilege existed since the statements were made to those with a direct interest in the subject matter. Eckman v. Cooper Tire & Rubber Co., 893 So. 2d 1049, 2005 Miss. LEXIS 113 (Miss. 2005).

RESEARCH REFERENCES

ALR.
Liability of nursing home for violating statutory duty to notify third party concerning patient's medical condition. 46 A.L.R.5th 821.

§ 41-63-4. Department of Health to design and establish registry program of the condition and treatment of persons seeking medical care; rules, regulations and procedures governing program; State Health Data Advisory Committee established; types of information provided to registry; confidentiality of information; penalties for knowing or negligent release of data in violation of this section; penalties for failure to provide data; fees and charges.

(1) In order to improve the quality and efficiency of medical care, the State Department of Health shall design and establish a registry program of the condition and treatment of persons seeking medical care that will provide the following:

(a) Information in a central data bank system of accurate, precise and current information regarding the diagnostic services and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons, or rehabilitation services for the rehabilitation of injured, disabled or sick persons provided by licensed health-care providers designated by the State Board of Health;

(b) Collection of that data;

(c) Dissemination of that data; and

(d) Analysis of that data for the purposes of the evaluation and improvement of the quality and efficiency of medical care provided in a health-care facility.

(2) The State Board of Health shall adopt rules, regulations and procedures to govern the operation of the registry program and to carry out the intent of this section.

(3) At a minimum, the board shall require that each hospital, freestanding ambulatory surgical facility and outpatient diagnostic imaging center shall submit patient data as defined by the board to the Mississippi Hospital Association or the department within sixty (60) days after the close of each calendar quarter for all patients that were discharged or died during that quarter.

(4)(a) There is created a State Health Data Advisory Committee to advise and make recommendations to the board regarding rules and regulations promulgated under this section. The committee shall consist of the following members:

(i) A representative of the Mississippi Hospital Association appointed by the association;

(ii) A representative of the Mississippi State Medical Association appointed by the association;

(iii) A representative of the Mississippi Nurses Association appointed by the association;

(iv) A representative of the Mississippi Health Care Association appointed by the association;

(v) A health researcher appointed by the Board of Trustees of State Institutions of Higher Learning;

(vi) A representative of the State Department of Health appointed by the State Health Officer;

(vii) A consumer representative who is not professionally involved in the purchase, provision, administration, or utilization review of health care or insurance appointed by the Governor;

(viii) A representative of a third-party payer appointed by the Governor;

(ix) A member who is not professionally involved in the purchase, provision, administration, or utilization review of health care or insurance and who has expertise in health planning, health economics, health policy, or health information systems appointed by the Governor; and

(x) A member of the business community appointed by the Governor.

(b) Committee members shall serve until a successor is appointed.

(c) Committee members shall elect a chairman and vice chairman and adopt bylaws.

(d) The department shall provide staff assistance as needed to the committee.

(5)(a) The department shall specify the types of information to be provided to the registry. The State Health Data Advisory Committee shall advise the department on the content, format, frequency and transmission of the data to be provided.

(b) Data elements required to be submitted must comply with current national standards recommended by the National Uniform Billing Committee, the National Committee on Vital Health Statistics, or similar national standards setting body.

(6) The department shall accept data submitted by the Mississippi Hospital Association on behalf of hospitals by entering into a binding agreement negotiated with the association to obtain data required under this section. A health-care provider shall submit the required information to the department:

(a) If the provider does not submit the required data through the Mississippi Hospital Association;

(b) If no binding agreement has been reached within ninety (90) days from July 1, 2008, between the department and the Mississippi Hospital Association; or

(c) If a binding agreement has expired for more than ninety (90) days.

(7) The information, data and records shall not divulge the identity of any patient.

(8) Submission of information to and use of information by the department in accordance with this section shall be considered a permitted disclosure for uses and disclosures required by law and for public health activities under the Health Insurance Portability and Accountability Act and the Privacy Rules promulgated thereunder at 45 CFR Sections 164.512(a) and (b).

(9) Notwithstanding any conflicting statute, court rule or other law, the data maintained in the registry shall be confidential and shall not be subject to discovery or introduction into evidence in any civil action. However, information and data otherwise discoverable or admissible from original sources are not to be construed as immune from discovery or use in any civil action merely because they were provided to the registry.

(10) The department shall assure that public use data are made available and accessible to interested persons in accordance with the rules and regulations promulgated by the board.

(11) Notwithstanding other actions or remedies afforded to persons about whom data is released, a person who knowingly or negligently releases data in violation of this section is liable for a civil penalty of not more than Ten Thousand Dollars ($10,000.00).

(12) A person or organization who fails to supply data required under this section is liable for a civil penalty of Five Cents (5¢) for each record for each day the submission is delinquent. A submission is delinquent if the department does not receive it within thirty (30) days after the date the submission was due. If the department receives the submission in incomplete form, the department shall notify the provider and allow fifteen (15) additional days to correct the error. The notice shall provide the provider an additional fifteen (15) days to submit the data before the imposition of any civil penalty. The maximum civil penalty for a delinquent submission is Ten Dollars ($10.00) for each record. The department shall issue an assessment of the civil penalty to the provider. The provider has a right to an informal conference with the department, if the provider requests the conference within thirty (30) days of receipt of the assessment. After the informal conference or, if no conference is requested, after the time for requesting the informal conference has expired, the department may proceed to collect the penalty. In its request for an informal conference, the provider may request the department to waive the penalty. The department may waive the penalty in cases of an act of God or other acts beyond the control of the provider. Waiver of the penalty is in the sole discretion of the department.

(13) The board shall have the authority to set fees and charges with regard to the collection and compilation of data requested for special reports and for the dissemination of data. The revenue derived from the fees imposed

in this section shall be deposited by the Department of Health in a special fund that is created in the State Treasury, which is earmarked for use by the department in conducting its activities under this section.

HISTORY:
Laws, 2002, ch. 438, § 1; Laws, 2008, ch. 446, § 1, eff from and after July 1, 2008.

Cross References —
For Mississippi Medicaid Program and the Children's Health Insurance Program; focused on premature infant healthcare, see § 43-13-147.

§ 41-63-5. Immunity from liability of furnishers of medical or dental information and of members of review committees for action taken.

No physician, dentist, pharmacist, nurse, hospital, organization or institution furnishing information, data, reports or records under Section 41-63-3 or 41-63-4 shall, by reason of furnishing such information be liable in damages to any person. No hospital, hospital governing body, medical or dental review committee, or member of such a committee or governing body, or employee thereof, shall be liable in damages to any person for any action taken or recommendation made within the scope of the functions of any medical or dental review committee if such committee or committee member acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to him at the time of such action or recommendation.

HISTORY:
Laws, 1977, ch. 346, § 3; Laws, 1984, ch. 464, § 3; Laws, 1994, ch. 524, § 3; Laws, 2002, ch. 438, § 3, eff from and after July 1, 2002.

RESEARCH REFERENCES

ALR.
Recovery for emotional distress resulting from statement of medical practitioner or official, allegedly constituting outrageous conduct. 34 A.L.R.4th 688.

§ 41-63-7. Confidentiality of names of patients studied.

The identity of any person whose condition or treatment has been studied shall be confidential and shall not be revealed under any circumstances. Any person who reveals the identity of such person in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof, shall be subject to confinement in the county jail for a term not to exceed one (1) year and fined a sum not to exceed Five Hundred Dollars ($500.00).

HISTORY:
Laws, 1977, ch. 346, § 4, eff from and after passage (approved March 14, 1977).

Cross References —
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 41-63-9. Discoverability and admissibility into evidence of proceedings and records of review committees.

(1) Notwithstanding any conflicting statute, court rule or other law, in order to encourage medical and dental review activity, the proceedings and records of any medical or dental review committee shall be confidential and shall not be subject to discovery or introduction into evidence in any civil action arising out of the matters which are the subject of evaluation and review by such committee. No person who was in attendance at a meeting of such committee shall be permitted or required to testify in any civil action regarding any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions or other actions of the committee or its members. However, information, documents or records otherwise discoverable or admissible from original sources are not to be construed as immune from discovery or use in any civil action merely because they were presented during the proceedings of such committee, nor should any person who testifies before such committee or who is a member of such committee be prevented from testifying as to other matters within his knowledge. Provided, however, a witness shall not be questioned concerning his participation on or testimony before such committee or opinions formed by him as a result of such committee hearings or proceedings.

(2) The provisions of subsection (1) of this section which limit the discovery of medical or dental review committee records and proceedings shall not apply in any legal action brought by a medical or dental review committee to restrict or revoke a physician's license to practice medicine or hospital staff privileges, or in any legal action brought by an aggrieved physician against any member of the committee or the legal entity which formed such committee for actions alleged to have been malicious.

(3) The provisions of this statute, including the confidentiality provided in this subsection, shall be deemed part of the substantive law of this state enacted for the expressed legislative purpose of promoting quality patient care through medical and dental peer review activities.

HISTORY:
Laws, 1977, ch. 346, § 5; Laws, 1984, ch. 464, § 4; Laws, 1994, ch. 524, § 4, eff from and after July 1, 1994.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Privileged matter.

1. In general.
The legislature clearly had the authority to enact §§ 41-63-9 and 41-63-23. Claypool v. Mladineo, 724 So. 2d 373, 1998 Miss. LEXIS 601 (Miss. 1998).

2. Privileged matter.
The privilege for records and transcripts of the proceedings of peer review committees does not extend to material otherwise discoverable from original sources, but factual data available to the committee (not generated by or collected for the use of the committee) is discoverable. Claypool v. Mladineo, 724 So. 2d 373, 1998 Miss. LEXIS 601 (Miss. 1998).

The privilege for records and transcripts of the proceedings of peer review committees only prohibits persons involved or present at committee proceedings from testifying as to the evidence produced during the committee proceedings; a person, even if a member of a committee or present during committee proceedings, is allowed to testify to other matters within his knowledge not specifically prohibited by the statutory language. Claypool v. Mladineo, 724 So. 2d 373, 1998 Miss. LEXIS 601 (Miss. 1998).

Information, records, or documents submitted to peer review committees should not be privileged merely because they were presented to the committee if they are obtainable from another source separate and outside of the peer review proceedings; further a plaintiff can elicit opinions in the form of responses to properly phrased interrogatories or through deposition testimony from a witness present during the proceedings. Claypool v. Mladineo, 724 So. 2d 373, 1998 Miss. LEXIS 601 (Miss. 1998).

A plaintiff is not entitled to a transcript of the medical peer review committee proceeding to determine what was discussed or considered by the committee; however, a plaintiff is entitled to information and documents presented to the committee in order to know what and where to find the information otherwise discoverable from original sources. Claypool v. Mladineo, 724 So. 2d 373, 1998 Miss. LEXIS 601 (Miss. 1998).

Defendants who assert the privilege for records and transcripts of the proceedings of peer review committees should be required to provide the names and addresses of all present claiming the medical peer review committee proceedings to the plaintiffs so that they might schedule depositions of those persons. Claypool v. Mladineo, 724 So. 2d 373, 1998 Miss. LEXIS 601 (Miss. 1998).

OPINIONS OF THE ATTORNEY GENERAL

The exemption stated in § 41-63-9(2) applies to the State Board of Medical Licensure and, when read in conjunction with § 73-25-28(1), they are entitled to discovery of any records or proceedings brought by a hospital review committee which relate to a matter the board has under investigation. 2002 Miss. Op. Att'y Gen. 53.

Statutes pertaining to the confidentiality and discoverability of reviews conducted under the statewide trauma system discussed. 2003 Miss. Op. Att'y Gen. 645.

RESEARCH REFERENCES

ALR.

Scope and extent of protection from disclosure of medical peer review proceedings relating to claim in medical malpractice action. 69 A.L.R.5th 559.

§ 41-63-21. Accreditation and quality assurance materials of health-care organizations; definition; confidentiality of materials generally.

The term "accreditation and quality assurance materials" as used in Sections 41-63-21 through 41-63-29 means and shall include written reports, records, correspondence and materials concerning the accreditation or quality assurance of any hospital, nursing home or other health-care facility and any medical care foundation, health maintenance organization, preferred provider organization, individual practice association or similar entity or any ambulance service or other prehospital emergency response agency. However, the term does not include reports, records, correspondence and materials concerning accreditation or quality assurance that are prepared by the State Department of Health. The confidentiality established by Sections 41-63-21 through 41-63-29 shall apply to accreditation and quality assurance materials prepared by an employee, advisor or consultant of any hospital, nursing home or other health-care facility and any medical care foundation, health maintenance organization, preferred provider organization, individual practice association or similar entity or any ambulance service or other prehospital emergency response agency and to materials provided by an employee, advisor or consultant of an accreditation, quality assurance or similar agency or similar body and to any individual who is an employee, advisor or consultant of a hospital, nursing home or other health-care facility and any medical care foundation, health maintenance organization, preferred provider organization, individual practice association or similar entity or any ambulance service or other prehospital emergency response agency, or accrediting, quality assurance or similar agency or body.

HISTORY:
Laws, 1995, ch. 467, § 1; Laws, 2006, ch. 394, § 2, eff from and after July 1, 2006.

§ 41-63-23. Accreditation and quality assurance materials of health-care organizations; discovery or introduction into evidence in civil actions; admissibility of testimony relating to preparation, evaluation or review of materials; admissibility of documents from original sources.

Accreditation and quality assurance materials, as defined in Sections 41-63-21 through 41-63-29, shall be held in confidence and shall not be subject to discovery or introduction into evidence in any civil action against the health-care professional or institution. No person involved in preparation, evaluation or review of accreditation or quality assurance materials shall be permitted or required to testify in any civil action as to any evidence or other matters produced or presented during the course of preparation, evaluation or review of such materials or as to any finding, recommendation, evaluation, opinion, or other action of such accreditation or quality assurance or other person involved therein. Information, documents or records otherwise available from original sources are not to be construed as being unavailable for discovery or for use in any civil action merely because they were presented or used in preparation of accreditation or quality assurance materials, nor should any person involved in preparation, evaluation or review of such materials be prohibited from testifying as to matters within his knowledge, but the witness testifying should not be asked about any opinions or data given by him in preparation, evaluation or review of accreditation or quality assurance materials.

HISTORY:
Laws, 1995, ch. 467, § 2, eff from and after July 1, 1995.

Cross References —
Applicability of the provisions of this section in certain legal actions brought by or against physicians, hospitals or other health care entities or persons acting on behalf of the entities, see § 41-63-25.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Privileged matter.

1. In general.

The legislature clearly had constitutional authority to enact §§ 41-63-9 and 41-63-23. Claypool v. Mladineo, 724 So. 2d 373, 1998 Miss. LEXIS 601 (Miss. 1998).

2. Privileged matter.

In a case where a patient was injured during an attempted escape from a mental health facility, a trial court did not err in partially denying a motion in limine because a patient advocate was not the equivalent of a quality assurance officer and subject to Miss. Code Ann. § 41-63-23. Miss. Dep't of Mental Health v. Hall, 936 So. 2d 917, 2006 Miss. LEXIS 462 (Miss. 2006).

The privilege for records and transcripts of the proceedings of peer review committees does not extend to material otherwise discoverable from original sources, but factual data available to the committee (not generated by or collected for the use of the committee) is discoverable. Claypool v. Mladineo, 724 So. 2d 373, 1998 Miss. LEXIS 601 (Miss. 1998).

The privilege for records and transcripts of the proceedings of peer review committees only prohibits persons involved or present at committee proceedings from testifying as to the evidence produced during the committee proceedings; a person, even if a member of a committee or present during committee proceedings, is allowed to testify to other matters within his knowledge not specifically prohibited by the statutory language. Claypool v. Mladineo, 724 So. 2d 373, 1998 Miss. LEXIS 601 (Miss. 1998).

Defendants who assert the privilege for records and transcripts of the proceedings of peer review committees should be required to provide the names and addresses of all present claiming the medical peer review committee proceedings to the plaintiffs so that they might schedule depositions of those persons. Claypool v. Mladineo, 724 So. 2d 373, 1998 Miss. LEXIS 601 (Miss. 1998).

§ 41-63-25. Accreditation and quality assurance materials of health-care organizations; use of materials in proceedings relating to restriction or revocation of physician's license.

The provisions of Section 41-63-23 shall not apply in any legal action brought by a hospital or other health-care entity to restrict or revoke a physician's license to practice medicine or hospital staff privileges, or in any legal action brought by an aggrieved physician against any hospital, health-care entity, or person acting on behalf of any such entity for actions alleged to have been malicious.

HISTORY:

Laws, 1995, ch. 467, § 3, eff from and after July 1, 1995.

§ 41-63-27. Construction of Sections 41-63-21 through 41-63-29 with Mississippi Rules of Civil Procedure and Evidence.

It is not the intent of Sections 41-63-21 through 41-63-29 to amend, alter or modify the Mississippi Rules of Civil Procedure and Evidence as promulgated by the Mississippi Supreme Court.

HISTORY:

Laws, 1995, ch. 467, § 4, eff from and after July 1, 1995.

§ 41-63-29. Effect and purpose of Sections 41-63-21 through 41-63-29.

The provisions of Sections 41-63-21 through 41-63-29, including the confidentiality provided in Sections 41-63-21 through 41-63-29 shall be deemed part of the substantive law of this state enacted for the express legislative purpose of promoting quality patient care through accreditation and quality assurance functions.

HISTORY:

Laws, 1995, ch. 467, § 5, eff from and after July 1, 1995.

CHAPTER 65.

[RESERVED]

CHAPTER 67.

MISSISSIPPI INDIVIDUAL ON-SITE WASTEWATER DISPOSAL SYSTEM LAW

General Provisions. 41-67-1
Wastewater Advisory Board. 41-67-101

GENERAL PROVISIONS

Sec.
41-67-1. Short title; legislative purpose, findings and intent [Repealed effective July 1, 2023].
41-67-2. Definitions [Repealed effective July 1, 2023].
41-67-3. Duties and responsibilities [Repealed effective July 1, 2023].
41-67-4. Duties and responsibilities of the department regarding individual on-site wastewater disposal systems [Repealed effective July 1, 2023].
41-67-5. Filing notice of intent for installation of an individual on-site wastewater disposal system; prior written approval of sewage treatment and disposal system required before connecting water utilities [Repealed effective July 1, 2023].
41-67-6. Applicability of chapter to certified professional evaluator or licensed professional engineer; soil and site evaluation; recommendations; request for determination of suitability; exemption of certain property [Repealed effective July 1, 2023].
41-67-7. Approval of design or construction, installation of disposal system required; requirements for approval of disposal systems; post-construction or installation final approval request; fines for noncompliance [Repealed effective July 1, 2023].
41-67-8. Repealed.
41-67-9. Grandfathering in of existing individual on-site wastewater disposal systems until certain occurrences; requirements for approval [Repealed effective July 1, 2023].
41-67-10. Testing and listing of advanced treatment systems [Repealed effective July 1, 2023].
41-67-11. Approval of individual on-site wastewater disposal systems in areas where they otherwise would not be approved; requirements for approval [Repealed effective July 1, 2023].
41-67-12. Assessment of fees [Repealed effective July 1, 2020; Repealed effective July 1, 2023; see also Editor's note].
41-67-13. Repealed.
41-67-15. Authority of municipalities and boards of supervisors to adopt more restrictive ordinances not impaired; Department of Health prohibited from approving system that does not comply with more restrictive ordinances [Repealed effective July 1, 2023].
41-67-16. Repealed.
41-67-17. Repealed.
41-67-19. Demonstrable competence of agents; implementing chapter; completion of department's certification training [Repealed effective July 1, 2023].
41-67-21. Owner repair of malfunctioning disposal system; abatement of health hazards; penalty for violations [Repealed effective July 1, 2023].
41-67-23. Inspection by Department where Department approval requested [Repealed effective July 1, 2023].
41-67-25. Certification of installers required; exception; renewal; revocation; certified installers listed; penalty for operating without certification [Repealed effective July 1, 2020; Repealed effective July 1, 2023; see also Editor's note].
41-67-27. Registration required for manufacturers of individual on-site wastewater disposal system components to operate or do business in state; penalties [Repealed effective July 1, 2023].
41-67-28. Violations; penalties and damages [Repealed effective July 1, 2023].

Sec.
41-67-29. Appeals [Repealed effective July 1, 2023].
41-67-31. Repeal of Sections 41-67-1 through 41-67-29 and Sections 41-67-33 through 41-67-41.
41-67-33. Procedures for conducting reviews requested by persons aggrieved by disapproval or requirements for on-site wastewater disposal system; application for variance; hearing; final decision by State Health Officer [Repealed effective July 1, 2023].
41-67-35. Repealed.
41-67-37. Certified professional evaluator; certification requirements; renewal; official list of certified professional evaluators; penalty for operating without certification [Repealed effective July 1, 2020; Repealed effective July 1, 2023; see Editor's note].
41-67-39. Certificate required for person operating as pumper removing and disposing of sludge from on-site wastewater disposal systems; certificate requirements; official list of certified pumpers; penalty for operating without license; suspension or revocation of pumper certification; grounds; renewal [Repealed effective July 1, 2020; Repealed effective July 1, 2023; see Editor's note].
41-67-41. Wastewater Advisory Council created; purpose; composition [Repealed effective July 1, 2023].

§ 41-67-1. Short title; legislative purpose, findings and intent [Repealed effective July 1, 2023].

(1) This chapter shall be known and may be cited as the "Mississippi Individual On-Site Wastewater Disposal System Law."

(2) It is the purpose of the Legislature through this chapter to protect human health and the environment while providing for reasonable use of individual on-site wastewater disposal systems. The Legislature finds that continued installation and operation of individual on-site wastewater disposal systems in a faulty or improper manner, in a manner that lacks essential maintenance for the system, or in areas where unsuitable soil and population density adversely affect the efficiency and functioning of these systems, has a detrimental effect on the public health and welfare and the environment through contamination of land, groundwater and surface waters. The Legislature, therefore, expresses a general preference for the installation and operation of centralized wastewater treatment systems in Mississippi, where feasible. The Legislature recognizes, however, that individual on-site wastewater treatment and disposal systems help meet the needs of the state's citizens, especially in rural locations, and can be rendered ecologically safe and protective of the public health if the systems are designed, installed, constructed, maintained and operated properly. It is the intent of the Legislature to allow the continued installation, use and maintenance of individual on-site wastewater disposal systems in a manner that will not jeopardize public health and welfare or the environment.

HISTORY:

Laws, 1996, ch. 516, § 1; reenacted without change, Laws, 2001, ch. 578; reenacted without change, Laws, 2002, ch. 493, § 1; reenacted without change, Laws, 2003, ch. 525, § 1; reenacted without change, Laws, 2005, ch. 545, § 1; reenacted without change, Laws, 2006, ch. 391, § 1; reenacted and amended, Laws, 2008, ch. 563, § 1; reenacted without change, Laws, 2011, ch. 544, § 1; reenacted and amended, Laws, 2013, ch. 513, § 1, eff from and after July 1, 2013; reenacted without change, Laws, 2018, ch. 346, § 1, eff from and after July 1, 2018.

Editor's Notes —

A prior § 41-67-1 [Laws, 1978, ch. 455, § 1, eff from and after July 1, 1978] was repealed by provisions of § 41-67-17, effective July 1, 1995.

For repeal of this section, see § 41-67-31.

Amendment Notes —

The 2018 amendment reenacted the section without change.

JUDICIAL DECISIONS

1. Interpretation.

Both Miss. Code Ann. § 19-5-151 et seq. and Miss. Code Ann. § 41-67-1 et seq., regulate health-related matters. As such, they can be considered in pari materia, and any ambiguities in one provision should be resolved by applying the statute consistently with other statutes dealing with the same or similar subject matter. Green v. Cleary Water, Sewer & Fire Dist., 910 So. 2d 1022, 2005 Miss. LEXIS 394 (Miss. 2005), cert. denied, 547 U.S. 1098, 126 S. Ct. 1883, 164 L. Ed. 2d 568, 2006 U.S. LEXIS 3287 (U.S. 2006).

Water and sewer district's ordinance regulating individual wastewater disposal systems was not preempted by Mississippi Individual On-Site Wastewater Disposal System Law, Miss. Code Ann. §§ 41-67-1 to 41-67-31, and was a valid exercise of sewer district's general police powers and its power to regulate it's the general health of its residents granted under Miss. Code Ann. § 19-5-173. The Mississippi On-Site Wastewater Disposal System Law, while not mentioning sewer districts, did not expressly prevent sewer districts from regulating the use or maintenance of individual on-site wastewater disposal systems, and it did not repeal Miss. Code Ann. § 19-5-173. Green v. Cleary Water, Sewer & Fire Dist., 910 So. 2d 1, 2004 Miss. App. LEXIS 761 (Miss. Ct. App. 2004), rev'd, 910 So. 2d 1022, 2005 Miss. LEXIS 394 (Miss. 2005).

§ 41-67-2. Definitions [Repealed effective July 1, 2023].

For purposes of this chapter, the following words shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Advanced treatment system" means an individual on-site wastewater treatment system that complies with Section 41-67-10.

(b) "Board" means the Mississippi State Board of Health.

(c) "Centralized wastewater treatment system" means a wastewater collection and treatment system that consists of collection sewers and a centralized treatment facility other than an individual on-site wastewater disposal system.

(d) "Certified installer" means any person who has met the requirements of Section 41-67-25.

(e) "Certified manufacturer" means any person registered with the department who holds a written certification issued by the department allowing the manufacturer to sell on-site wastewater products in the state.

(f) "Certified professional evaluator" means any person who has met the requirements of Section 41-67-37 or a licensed professional engineer.

(g) "Certified pumper" means any person registered with the department who holds a written certification issued by the department allowing the person to engage in the removal and disposal of sludge, grease and waste and who has met the requirements of Section 41-67-39.

(h) "Cluster system" means a wastewater collection and treatment system under some form of common or private ownership and management that provides treatment and dispersal/discharge of wastewater from two (2) or more homes or buildings but less than a subdivision.

(i) "Conventional system" means an individual on-site wastewater disposal system consisting of a septic tank and subsurface disposal field.

(j) "Department" means the Mississippi State Department of Health.

(k) "Decentralized wastewater treatment system" means any commercial wastewater treatment for fewer than ten (10) lots.

(*l*) "Effluent" means sewage, water, or other liquid, partially or completely treated or in its natural state, flowing out of a septic tank, advanced treatment system, or other treatment system or system component by the department.

(m) "Final approval" means an issuance of a document from the department stating that a determination has been made by the department that the individual on-site wastewater disposal system recommended/designed has been installed and fulfills all requirements under this chapter or any variance that has been granted by the department.

(n) "Generator" means any person whose act or process produces sewage or other material suitable for disposal in an individual on-site wastewater disposal system.

(o) "Individual on-site wastewater disposal system" means a sewage treatment and effluent disposal system that does not discharge into waters of the state, that serves only one (1) legal tract, that accepts only residential waste and similar waste streams maintained on the property of the generator, and that is designed and installed in accordance with this law and regulations of the board.

(p) "Notice of intent" means notification by an applicant to the department prior to construction and submission of all required information, which is used by the department to initiate the process to evaluate the property for the suitability of an individual on-site wastewater disposal system.

(q) "Performance-based system" means an individual on-site wastewater disposal system designed to meet standards established to designate a level of treatment of wastewater that an individual on-site wastewater disposal system must meet, including, but not limited to, biochemical oxygen demand, total suspended solids, nutrient reduction and fecal coliform.

(r) "Permit/recommendation" means that a person has filed a notice of intent with the department and the department has made a determination of the suitability of the property for the use of an individual on-site wastewater disposal system.

(s) "Person" means any individual, trust, firm, joint-stock company, public or private corporation (including a government corporation), partnership, association, state, or any agency or institution thereof, municipality, commission, political subdivision of a state or any interstate body, and includes any officer or governing or managing body of any municipality, political subdivision, or the United States or any officer or employee thereof.

(t) "Plot plan" means a property drawing reflecting property lines, site features (such as ponds, wells, etc.), dwellings and any other intended uses of the property therein including encumbrances.

(u) "Property of the generator" means land owned by or under permanent legal easement or lease to the generator.

(v) "Qualified homeowner maintenance provider" means the current owner of a specific residence where that homeowner resides and where the homeowner has met the requirements of the rules and regulations of the department to provide maintenance for his or her system.

(w) "Licensed professional engineer" means any person who has met the requirements under Section 73-13-23(1) and who has been issued a certificate of registration as a professional engineer.

(x) "Septage" means the liquid, solid, and semisolid material that results from wastewater pretreatment in a septic tank, portable toilet, or grease trap, which must be pumped, hauled, treated and disposed of properly.

(y) "Subdivision" means any tract or combination of adjacent tracts of land that is subdivided into ten (10) or more tracts, sites or parcels for the purpose of commercial or residential development.

HISTORY:

Laws, 1996, ch. 516, § 2; reenacted without change, Laws, 2001, ch. 578, § 2; reenacted without change, Laws, 2002, ch. 493, § 2; reenacted without change, Laws, 2003, ch. 525, § 2; reenacted and amended, Laws, 2005, ch. 545, § 2; reenacted without change, Laws, 2006, ch. 391, § 2; reenacted and amended, Laws, 2008, ch. 563, § 2; reenacted and amended, Laws, 2011, ch. 544, § 2; reenacted and amended, Laws, 2013, ch. 513, § 2, eff from and after July 1, 2013; reenacted without change, Laws, 2018, ch. 346 § 2, eff from and after July 1, 2018.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference at the end of (a) by substituting "Section 41-67-10" for "Section 47-67-10." The Joint Committee ratified the correction at its August 1, 2013, meeting.

Editor's Notes —

For repeal of this section, see § 41-67-31.

Amendment Notes —

The 2018 amendment reenacted the section without change.

§ 41-67-3. Duties and responsibilities [Repealed effective July 1, 2023].

(1) The board and/or the department shall have the following duties and responsibilities:

(a) To exercise general supervision over the design, installation, operation and maintenance of individual on-site wastewater disposal systems, decentralized wastewater treatment systems and cluster systems;

(b) To adopt, modify, repeal and promulgate rules and regulations, after due notice and hearing, and where not otherwise prohibited by federal or state law, to make exceptions to, to grant exemptions from and to enforce rules and regulations implementing or effectuating the duties of the board under this chapter to protect the public health. The board may grant variances from rules and regulations adopted under this chapter, including requirements for buffer zones, or from setbacks required under Section 41-67-7 where the granting of a variance shall not subject the public to unreasonable health risks or jeopardize environmental resources;

(c) To provide or deny certification for persons engaging in the business for hire of the installation, operation or maintenance of individual on-site wastewater disposal systems and persons engaging in the removal and disposal of the sludge and liquid waste from those systems;

(d) To suspend or revoke certifications issued to persons engaging in the business for hire of the installation, operation or maintenance of individual on-site wastewater disposal systems or persons engaging in the removal and disposal of the sludge and liquid waste from those systems, when it is determined the person has violated this chapter or applicable rules and regulations;

(e) To require the submission of information deemed necessary by the department to determine the suitability of individual lots for individual on-site wastewater disposal systems for the purpose of commercial or residential development; and

(f) To adopt, modify, repeal and promulgate rules and regulations, after due notice and hearing, and where not otherwise prohibited by federal or state law, as necessary to determine the suitability of individual on-site wastewater disposal systems in subdivisions.

(2) To assure the effective and efficient administration of this chapter, the board shall adopt rules governing the design, construction or installation, operation and maintenance of individual on-site wastewater disposal systems, including rules concerning the:

(a) Review and approval of individual on-site wastewater disposal systems in accordance with Section 41-67-6;

(b) Certification of installers;

(c) Certification of pumpers;

(d) Certification of manufacturers;

(e) Certification of professional evaluators; and

(f) Creation of regulations that authorize the original and any subsequent homeowner to be trained by certified installers as defined in Section 41-67-25(2) or other factory representatives in order to educate the homeowner with the necessary knowledge to provide maintenance to the homeowner's system; no fees shall be charged to the homeowner for such training, thus allowing the homeowner to meet the requirements of Section 41-67-7(5).

(3) In addition, the board shall adopt rules establishing performance standards for individual on-site wastewater disposal systems for single family residential generators and rules concerning the operation and maintenance of individual on-site wastewater disposal systems designed to meet those standards. The performance standards shall be consistent with the federal Clean Water Act, maintaining the wastes on the property of the generator and protection of the public health. Rules for the operation and maintenance of individual on-site wastewater disposal systems designed to meet performance standards shall include rules concerning the following:

(a) A standard application form and requirements for supporting documentation;

(b) Application review;

(c) Approval or denial of authorization for proposed systems;

(d) Requirements, as deemed appropriate by the board, for annual renewal of authorization;

(e) Enforcement of the requirements and conditions of authorization; and

(f) Inspection, monitoring, sampling and reporting on the performance of the system.

Any system proposed for authorization in accordance with performance standards must be designed and certified by a licensed professional engineer in the State of Mississippi and must be authorized by the department before installation.

(4) To the extent practicable, all rules and regulations adopted under this chapter shall give maximum flexibility to persons installing individual on-site wastewater disposal systems and all options consistent with the federal Clean Water Act, consistent with maintaining the wastes on the property of the generator and consistent with protection of the public health. In addition, all rules and regulations, to the extent practicable, shall encourage the use of economically feasible systems, including all techniques and technologies for individual on-site wastewater disposal.

(5) All regulations shall be applied uniformly in all areas of the state and shall take into consideration and make provision for different types of soil in the state when performing soil and site evaluations.

HISTORY:

Laws, 1996, ch. 516, § 3; reenacted without change, Laws, 2001, ch. 578, § 3; reenacted without change, Laws, 2002, ch. 493, § 3; reenacted without change, Laws, 2003, ch. 525, § 3; reenacted and amended, Laws, 2005, ch. 545, § 3; reenacted without change, Laws, 2006, ch. 391, § 3; reenacted and amended, Laws, 2008, ch. 563, § 3; reenacted and amended, Laws, 2011, ch. 544, § 3; reenacted and amended, Laws, 2013, ch. 513, § 3, eff from and after July 1, 2013; reenacted without change, Laws, 2018, ch. 346, § 3, eff from and after July 1, 2018.

Editor's Notes —

A prior § 41-67-3 [Laws, 1978, ch 455, § 2; Laws, 1987, ch. 512, § 1; reenacted, Laws, 1989, ch. 555, § 1; reenacted and amended, Laws, 1991, ch. 616, § 1, eff from and after passage (approved May 3, 1991)] was repealed by provisions of § 41-67-17, effective July 1, 1995.

For repeal of this section, see § 41-67-31.

Amendment Notes —

The 2018 amendment reenacted the section without change.

Cross References —

Powers and duties of State Board of Health, including requirement by Board that, from and after January 1, 1998, persons installing individual onsite wastewater disposal systems or removing waste from such systems be licensed to do so, see § 41-3-15.

Certification of professional evaluators, see § 41-67-37.

Federal Aspects—

Clean Water Act generally, see 33 USCS §§ 1251 et seq.

OPINIONS OF THE ATTORNEY GENERAL

An aerobic treatment system must be tested and listed according to the rules of the Board of Health and, in addition, must have been tested and listed by a third party certifying program according to the rules and regulations of the Board for testing and listing of manufacturers of such systems and must also be in compliance with the most current revision of the ANSI/NSF standard. 1998 Miss. Op. Att'y Gen. 47.

The Mississippi State Department of Health is the proper party to approve the design, construction, and installation of an on-site waste water disposal system when so requested; thus, a county board of supervisors does not have authority to prohibit professional engineers from designing, constructing, or installing individual on-site wastewater disposal systems, or directly supervising same. Thompson, Jr., 2001 Miss. Op. Att'y Gen. 627.

The board of health has the authority to adopt regulations aimed at owners of individual onsite wastewater disposal systems (IOWDS) setting minimum standards concerning the maintenance of the IOWDS, and also to provide for periodic inspections to ensure such compliance, but the board may not require owners to enter maintenance contracts. 2006 Miss. Op. Att'y Gen. 18.

§ 41-67-4. Duties and responsibilities of the department regarding individual on-site wastewater disposal systems [Repealed effective July 1, 2023].

(1) The department shall determine the feasibility of establishing centralized wastewater treatment systems upon the submission by the developer of a preliminary design and feasibility study prepared by a licensed professional engineer. The developer may request and obtain a hearing before the board if the developer is dissatisfied with the department's determination of feasibility. The determination that a centralized wastewater treatment system must be established shall be made without regard to whether the establishment of a centralized wastewater treatment system is authorized by law or is subject to approval by one or more state or local government or public bodies. Whenever a developer requests a determination of feasibility, the department must make the determination within thirty (30) days after receipt of the preliminary design and feasibility study from the developer. The department shall state in writing the reasons for its determination. If the department does not make a determination within thirty (30) days, all sites within the subdivision shall be approved, if a certified installer attests or a department environmentalist determines that each site can be adequately served by an individual on-site wastewater disposal system.

(2) Where subdivisions are proposed that are composed of fewer than thirty-five (35) building sites, and no centralized wastewater treatment system is available, the department may waive the requirement for a feasibility study. If the feasibility study is waived, all sites within the subdivision shall be approved, if a certified installer attests or a department environmentalist determines that each site can be adequately served by an individual on-site wastewater disposal system.

(3) No feasibility study or centralized wastewater treatment system shall be required for subdivisions designed, laid out, platted or partially constructed before July 1, 1988, or for any subdivision that was platted and recorded during the period from July 1, 1995, through June 30, 1996.

(4) "Feasibility study" means a written evaluation and analysis of the potential of a proposed project that is based on investigation and research by a licensed professional engineer to give cost comparison between centralized or decentralized treatment and disposal and individual on-site wastewater disposal systems.

HISTORY:

Laws, 1996, ch. 516, § 4; reenacted without change, Laws, 2001, ch. 578, § 4; reenacted without change, Laws, 2002, ch. 493, § 4; reenacted and amended, Laws, 2003, ch. 525, § 4; Laws, 2005, ch. 545, § 4; reenacted without change, Laws, 2006, ch. 391, § 4; reenacted without change, Laws, 2008, ch. 563, § 4; reenacted without change, Laws, 2011, ch. 544, § 4; reenacted and amended, Laws, 2013, ch. 513, § 4, eff from and after July 1, 2013; reenacted without change, Laws, 2018, ch. 346, § 4, eff from and after July 1, 2018.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error at the end of the second sentence of (1) by substituting "department's determination of feasibility" for "board's determination of feasibility." The Joint Committee ratified the correction at its August 1, 2013, meeting.

Editor's Notes —

A prior § 41-67-4 [Laws, 1992, ch. 536, § 1, eff from and after July 1, 1992] was repealed by provisions of § 41-67-17, effective July 1, 1995.

For repeal of this section, see § 41-67-31.

Amendment Notes —

The 2018 amendment reenacted the section without change.

§ 41-67-5. Filing notice of intent for installation of an individual on-site wastewater disposal system; prior written approval of sewage treatment and disposal system required before connecting water utilities [Repealed effective July 1, 2023].

(1) No owner, lessee or developer shall construct or place any mobile, modular or permanently constructed residence, building or facility, which may require the installation of an individual on-site wastewater disposal system, without having first submitted a notice of intent to the department. Upon receipt of a notice of intent, the department shall provide the owner, lessee or developer with complete information on individual on-site wastewater disposal systems, including, but not limited to, applicable rules and regulations regarding the design, installation, operation and maintenance of individual on-site wastewater disposal systems and known requirements of lending institutions for approval of the systems.

(2) No public utility supplying water shall make connection to any dwelling, house, mobile home or residence without the prior written approval of the department certifying that the plan for the sewage treatment and disposal system at the location of the property complies with this chapter. Connections of water utilities may be made during construction if the department has approved a plan for a sewage treatment and disposal system and the owner of the property has agreed to have the system inspected and approved by the department before the use or occupancy of the property.

(3) The department shall furnish to the county tax assessor or collector, upon request, the name and address of the person submitting a notice of intent and the section, township and range of the lot or tract of land on which the individual on-site wastewater disposal system will be installed.

HISTORY:

Laws, 1996, ch. 516, § 5; reenacted without change, Laws, 2001, ch. 578, § 5; reenacted and amended, Laws, 2002, ch. 493, § 5; reenacted without change, Laws, 2003, ch. 525, § 5; reenacted without change, Laws, 2005, ch. 545, § 5; reenacted without change, Laws, 2006, ch. 391, § 5; reenacted and amended, Laws, 2008, ch. 563, § 5; reenacted without change, Laws, 2011, ch. 544, § 5; reenacted and amended, Laws, 2013, ch. 513, § 5, eff from and after July 1, 2013; reenacted without change, Laws, 2018, ch. 346, § 5, eff from and after July 1, 2018.

Editor's Notes —

A prior § 41-67-5 [Laws, 1978, ch. 455, § 6; Laws, 1987, ch. 512, § 2; Laws, 1989, ch. 555, § 2; reenacted and amended, Laws, 1991, ch. 616, § 2; Laws, 1992, ch. 536, § 2, effective from and after July 1, 1992] was repealed by provisions of § 41-67-17, eff July 1, 1995.

For repeal of this section, see § 41-67-31.

Amendment Notes —

The 2018 amendment reenacted the section without change.

Cross References —

Powers and duties of State Department of Health, see § 41-3-15.

Exemption of certain property from the provisions of subsection (2) of this section, see § 41-67-6.

RESEARCH REFERENCES

Am. Jur.
61C Am. Jur. 2d, Pollution Control § 1943.

CJS.
1A C.J.S., Actions §§ 58, 128, 137, 148, 156.
94 C.J.S., Waters §§ 193, 246, 274, 279.

§ 41-67-6. Applicability of chapter to certified professional evaluator or licensed professional engineer; soil and site evaluation; recommendations; request for determination of suitability; exemption of certain property [Repealed effective July 1, 2023].

(1) Nothing in this chapter shall preclude a certified professional evaluator or licensed professional engineer from providing services relating to the design of an individual on-site wastewater disposal system to comply with this chapter, except for performance-based systems as specified in Section 41-67-3(3). A certified professional evaluator or licensed professional engineer shall notify the department in writing of those services being provided, including the type of treatment, the type of disposal, and the property address for the treatment and disposal system. Construction or installation shall not begin before authorization by the department. The department shall respond within ten (10) business days with authorization that the certified professional evaluator or licensed professional engineer fulfills the requirements of the law.

(2) Within five (5) working days following receipt of the notice of intent and plot plan by an owner, lessee or developer of any lot or tract of land, the department shall conduct a soil and site evaluation, except in cases where a certified professional evaluator or licensed professional engineer provides services relating to the design, construction or installation of an individual on-site wastewater disposal system to comply with this chapter. All regulations shall be applied uniformly in all areas of the state and shall take into consideration and make provision for different types of soil in the state when performing soil and site evaluations. Within ten (10) additional working days, the department shall make recommendations to the owner, lessee or developer of the type or types of individual on-site wastewater disposal systems suitable for installation on the lot or tract, unless there are conditions requiring further investigation that are revealed in the initial evaluation. In making recommendations on the type or types of individual on-site wastewater disposal systems suitable for installation on a lot or tract, personnel of the department shall use best professional judgment based on rules and regulations adopted by the board, considering the type or types of systems which are installed and functioning on lots or tracts near the subject lot or tract. To the extent practicable, the recommendations shall give the owner, lessee or developer maximum flexibility and all options consistent with the federal Clean Water

Act, consistent with maintaining the wastes on the property of the generator and consistent with protection of the public health. The system or systems recommended shall be environmentally sound and cost-effective. The department, a licensed professional engineer or a certified professional evaluator shall provide complete information, including all applicable requirements and regulations on all systems recommended. The owner, lessee or developer shall have the right to choose among systems. The department shall provide the owner, lessee or developer with a permit/recommendation that specifies all types of individual on-site wastewater disposal systems that are suitable for installation on the lot or tract.

(3) Within thirty (30) days of receipt of a request for determination of suitability of individual on-site wastewater disposal systems in a subdivision, the department shall advise the developer in writing either that all necessary information needed for determination of suitability has been received or state the additional information needed by the department for determination of suitability.

(4) Whenever a developer requests a determination of suitability of individual on-site wastewater disposal systems in a subdivision, the department must make the determination within thirty (30) days after receipt of all necessary information needed for the determination of suitability from the developer. The department shall state in writing the reasons for its determination.

(5)(a) The certified installer shall notify the department at least twenty-four (24) hours before beginning installation of an individual on-site wastewater disposal system and, at that time, schedule a time for inspection of the system with the appropriate county department of health.

(b) A certified installer, or designated agent thereof, shall not cover his work with soil or other surface material unless the installer has received authorization to cover the system after an inspection by a department environmentalist, or unless a department environmentalist does not arrive for inspection within thirty (30) minutes of the designated and agreed upon time, in which case a certified installer, or designated agent thereof, may submit an affidavit of proper installation to the department for final approval.

(6) A person may not design, construct or install, or cause to be designed, constructed or installed an individual on-site wastewater disposal system that does not comply with this chapter and rules and regulations of the board.

(7) Any lot or tract that is two (2) acres or larger shall be exempt from the requirements of this chapter and regulations of the department relating to approval of individual on-site wastewater disposal systems by the department, and shall be exempt from the provisions of Section 41-67-5(2), provided that:

(a) All wastewater is contained on the lot or tract;

(b) No watercourse, as defined in Section 51-3-3(h), of Mississippi or the United States is impacted; and

(c) The person who installed the individual on-site wastewater disposal system provides the department with a signed affidavit attesting that the requirements of paragraphs (a) and (b) are met.

HISTORY:

Laws, 1996, ch. 516, § 6; Laws, 1999, ch. 565, § 3; reenacted without change, Laws, 2001, ch. 578, § 6; reenacted without change, Laws, 2002, ch. 493, § 6; reenacted and amended, Laws, 2003, ch. 525, § 6; reenacted and amended, Laws, 2005, ch. 545, § 6; reenacted without change, Laws, 2006, ch. 391, § 6; reenacted and amended, Laws, 2008, ch. 563, § 6; reenacted and amended, Laws, 2011, ch. 544, § 6; reenacted and amended, Laws, 2013, ch. 513, § 6, eff from and after July 1, 2013; reenacted without change, Laws, 2018, ch. 346, § 6, eff from and after July 1, 2018.

Editor's Notes —

A prior § 41-67-7 [Laws, 1992, ch. 536, § 3, eff from and after July 1, 1992] was repealed by provisions of § 41-67-17, effective July 1, 1995.

For repeal of this section, see § 41-67-31.

Amendment Notes —

The 2018 amendment reenacted the section without change.

Cross References —

Owners of property on which existing individual on-site wastewater disposal system does not meet requirements of § 41-67-9(2) are required to meet this section or § 41-67-21, see § 41-67-9.

Federal Aspects—

Clean Water Act generally, see 33 USCS §§ 1251 et seq.

RESEARCH REFERENCES

Am. Jur.

61C Am. Jur. 2d, Pollution Control § 1883.

§ 41-67-7. Approval of design or construction, installation of disposal system required; requirements for approval of disposal systems; post-construction or installation final approval request; fines for noncompliance [Repealed effective July 1, 2023].

(1) Approval of the design, construction or installation of an individual on-site wastewater disposal system by the department is required, except as otherwise provided in Section 41-67-6(7). Upon completion of installation of the system, the department shall approve the design, construction or installation of that system, as requested, if the system is designed, constructed and installed, as the case may be, in accordance with the rules and regulations of the board. Whenever a person requests approval of an individual on-site wastewater disposal system and has met the requirements in subsection (3) of this section, the department must approve or disapprove the request within five (5) working days. If the department disapproves the request, the department shall state in writing the reasons for the disapproval. If the department does not respond to the request within ten (10) calendar days, the request for approval of the individual on-site wastewater disposal system shall be deemed approved.

(2) Individual on-site wastewater disposal systems shall be considered acceptable, provided the following requirements are met:

(a) Centralized wastewater treatment systems are not available or feasible;

(b) The existing disposal systems in the area are functioning satisfactorily;

(c) Soil types, soil texture, seasonal water tables and other limiting factors are satisfactory for underground absorption;

(d) Any private water supply is located at a higher elevation or it must be properly protected, and at least fifty (50) feet from the individual on-site wastewater disposal system and at least one hundred (100) feet from the disposal field of the system; and

(e) The systems meet applicable water quality requirements of Section 41-67-10.

(3) After construction or installation of the individual on-site wastewater disposal system, the property owner or his agent shall provide a final approval request containing the following to the department:

(a) A signed affidavit from the installer that the system was installed in compliance with all requirements, regulations and permit conditions applicable to the system installed; and

(b) For any advanced treatment system, an affidavit from the property owner agreeing to a continuing maintenance agreement on the installed system at the end of the required manufacturer's maintenance agreement.

(4) If any person or certified installer fails to obtain final approval or submit an affidavit of proper installation to the department in the installation of the system, the board, after due notice and hearing, may levy an administrative fine not to exceed Ten Thousand Dollars ($10,000.00). Each wastewater system installed not in compliance with this chapter or applicable rules and regulations of the board may be considered a separate offense.

(5) The property owner, if not a qualified homeowner maintenance provider, shall keep a continuing maintenance agreement with a certified installer on all advanced treatment systems in perpetuity. Any person violating this subsection shall be subject to the penalties and damages as provided in Section 41-67-28(5).

HISTORY:

Laws, 1996, ch. 516, § 7; reenacted without change, Laws, 2001, ch. 578, § 7; reenacted without change, Laws, 2002, ch. 493, § 7; reenacted without change, Laws, 2003, ch. 525, § 7; reenacted and amended, Laws, 2005, ch. 545, § 7; reenacted without change, Laws, 2006, ch. 391, § 7; reenacted and amended, Laws, 2008, ch. 563, § 7; reenacted without change, Laws, 2011, ch. 544, § 7; reenacted and amended, Laws, 2013, ch. 513, § 7, eff from and after July 1, 2013; reenacted and amended, Laws, 2018, ch. 346, § 7, eff from and after July 1, 2018.

Editor's Notes —

A prior § 41-67-7 [Laws, 1978, ch. 455, § 3(1), (2); Laws, 1987, ch. 512, § 3; Laws, 1989, ch. 555, § 3; reenacted and amended, Laws, 1991, ch. 616, § 3; Laws, 1992, ch. 536, § 4, eff from and after July 1, 1992 was repealed by provisions of § 41-67-17, effective July 1, 1995].

For repeal of this section, see § 41-67-31.

Amendment Notes —

The 2018 amendment reenacted and amended the section by making a minor grammatical change in (2)(d).

Cross References —

Penalty for violation of subsection (5) of this section, see § 41-67-28.

Federal Aspects—

Clean Water Act generally, see 33 USCS §§ 1251 et seq.

RESEARCH REFERENCES

Am. Jur.

61C Am. Jur. 2d, Pollution Control § 1943.

§ 41-67-8. Repealed.

Repealed by its own terms, effective September 1, 2005.

§ 41-67-8. [Laws, 1996, ch. 516, § 8; reenacted without change, Laws, 2001, ch. 578, § 8; reenacted without change, Laws, 2002, ch. 493, § 8; reenacted without change, Laws, 2003, ch. 525, § 8; reenacted and amended, Laws, 2005, ch. 545, § 8, eff from and after July 1, 2005.]

Editor's Notes —

Former § 41-67-8 provided for the determination of applicability of individual on-site wastewater systems.

§ 41-67-9. Grandfathering in of existing individual on-site wastewater disposal systems until certain occurrences; requirements for approval [Repealed effective July 1, 2023].

(1) All existing individual on-site wastewater disposal systems on July 1, 2014, shall be grandfathered in until a valid complaint is registered with a county department of health or until a property owner requests an inspection by the department.

(2) All existing individual on-site wastewater disposal systems shall be considered acceptable provided the following requirements are met:

(a) The existing individual on-site wastewater disposal system and all treated effluent is contained on the property of the generator;

(b) No evidence that any insufficiently treated effluent is leaving the property of the generator or has been seeping to the surface of the ground;

(c) Centralized wastewater treatment systems are not available;

(d) If a private water supply well is present, the well should be located at a higher elevation than the disposal system and is protected from surface contamination by a concrete slab of a thickness of at least four (4) inches extending at least two (2) feet in all directions from the well casing; and

(e) If an advanced treatment system is used, the property owner shall be required to contact an authorized representative of a certified manufacturer of the specific advanced treatment system to provide a continuous maintenance agreement or provide the property owner training to become a qualified homeowner maintenance provider.

(3) Owners of property on which an existing individual on-site wastewater disposal system does not meet the requirements of subsection (2) of this section shall be required by the department to meet Section 41-67-6 or Section 41-67-21.

HISTORY:

Laws, 1996, ch. 516, § 9; reenacted without change, Laws, 2001, ch. 578, § 9; reenacted without change, Laws, 2002, ch. 493, § 9; reenacted without change, Laws, 2003, ch. 525, § 9; reenacted and amended, Laws, 2005, ch. 545, § 9; reenacted without change, Laws, 2006, ch. 391, § 8; reenacted and amended, Laws, 2008, ch. 563, § 8; reenacted without change, Laws, 2011, ch. 544, § 8; reenacted and amended, Laws, 2013, ch. 513, § 8, eff from and after July 1, 2013; reenacted without change, Laws, 2018, ch. 346, § 8, eff from and after July 1, 2018.

Editor's Notes —

A prior § 41-67-10 [Laws, 1978, ch. 455, § 3(3); brought forward, Laws, 1991, ch. 616, § 4; reenacted and amended, Laws, 1992, ch. 536, § 5, eff from and after July 1, 1992] was repealed by provisions of § 41-67-17, effective July 1, 1995.

For repeal of this section, see § 41-67-31.

Amendment Notes —

The 2018 amendment reenacted the section without change.

§ 41-67-10. Testing and listing of advanced treatment systems [Repealed effective July 1, 2023].

(1) Advanced treatment systems may be installed only if they have been tested and are listed by an American National Standards Institute (ANSI) third-party certifying program at the time of installation. Advanced treatment systems shall be in compliance with standards for a Class I system as defined by the most current revision of American National Standards Institute/National Sanitation Foundation (ANSI/NSF) International Standard Number 40, which are incorporated by reference. An approved ANSI third-party certifying program shall comply with the following provisions for systems which it has certified to be installed in Mississippi:

(a) Be accredited by the American National Standards Institute;

(b) Have established procedures which send representatives to distributors in Mississippi on a recurring basis to conduct evaluations to assure that distributors of certified advanced treatment systems are providing proper maintenance, have sufficient replacement parts available and are maintaining service records;

(c) Notify the department of the results of monitoring visits to manufacturers and distributors within sixty (60) days of the conclusion of the monitoring; and

(d) Submit completion reports on testing and any other information as the department may require for its review.

(2) All manufacturers of advanced treatment systems certified in Mississippi shall provide technical training staff to the department as needed.

HISTORY:

Laws, 1996, ch. 516, § 10; reenacted without change, Laws, 2001, ch. 578, § 10; reenacted without change, Laws, 2002, ch. 493, § 10; reenacted without change, Laws, 2003, ch. 525, § 10; reenacted without change, Laws, 2005, ch. 545, § 10; reenacted without change, Laws, 2006, ch. 391, § 9; reenacted and amended, Laws, 2008, ch. 563, § 9; reenacted and amended, Laws, 2011, ch. 544, § 9; reenacted and amended, Laws, 2013, ch. 513, § 9, eff from and after July 1, 2013; reenacted without change, Laws, 2018, ch. 346, § 9, eff from and after July 1, 2018.

Editor's Notes —

A prior § 41-67-10 [Laws, 1992, ch. 536, § 6, effective from and after July 1, 1992] was repealed by provisions of § 41-67-17, eff July 1, 1995.

For repeal of this section, see § 41-67-31.

Amendment Notes —

The 2018 amendment reenacted the section without change.

OPINIONS OF THE ATTORNEY GENERAL

An aerobic treatment system must be tested and listed according to the rules of the Board of Health and, in addition, must have been tested and listed by a third party certifying program according to the rules and regulations of the Board for testing and listing of manufacturers of such systems and must also be in compliance with the most current revision of the ANSI/NSF standard. 1998 Miss. Op. Att'y Gen. 47.

§ 41-67-11. Approval of individual on-site wastewater disposal systems in areas where they otherwise would not be approved; requirements for approval [Repealed effective July 1, 2023].

(1) Individual on-site wastewater disposal systems may be approved in an area where individual on-site wastewater disposal systems otherwise would not be approved because of the availability or feasibility of connection to a centralized wastewater treatment system only after a contract has been awarded or other definite commitments as are deemed sufficient to the department are formalized for the construction of a centralized wastewater treatment system that upon completion will adequately serve the property. Individual on-site wastewater disposal systems shall only be approved when the centralized wastewater treatment system will be completed and available for use within thirty-six (36) months. The department may approve the installation of a system under these circumstances only if the system will comply with the requirements of Section 41-67-5(1) and comply with all construction requirements of the department. The system may be installed only after the developer has signed a written agreement with the centralized wastewater treatment provider stating that the developer will connect to the centralized wastewater treatment system when it becomes available, and the provider of the centralized wastewater treatment system being constructed certifies that the centralized wastewater treatment system will have adequate capacity to accept the sewage to be produced by the individual on-site wastewater disposal systems. The developer shall install an internal sewage collection system from each lot to the connection point to the centralized wastewater treatment system as he develops the streets of the subdivision. Upon completion of the construction of the centralized wastewater treatment system, all individual on-site wastewater disposal systems shall be abandoned and all residences, buildings or facilities connected to the centralized wastewater treatment system.

(2) The department may approve the use of a sewage holding tank for the purpose of providing sewage services. The department shall require the proper abandonment and removal of the sewage holding tank and connection to a centralized wastewater treatment system when that system is available, or the usage is no longer needed.

HISTORY:

Laws, 1996, ch. 516, § 11; Laws, 1999, ch. 565, § 2; reenacted without change, Laws, 2001, ch. 578, § 11; reenacted without change, Laws, 2002, ch. 493, § 11; reenacted without change, Laws, 2003, ch. 525, § 11; reenacted without change, Laws, 2005, ch. 545, § 11; reenacted without change, Laws, 2006, ch. 391, § 10; reenacted and amended, Laws, 2008, ch. 563, § 10; reenacted without change, Laws, 2011, ch. 544, § 10; reenacted and amended, Laws, 2013, ch. 513, § 10, eff from and after July 1, 2013; reenacted without change, Laws, 2018, ch. 346, § 10, eff from and after July 1, 2018.

Editor's Notes —

A prior § 41-67-11 [Laws, 1978, ch. 455, § 3(4); brought forward, Laws, 1991, ch. 616, § 5, eff from and after passage (approved May 3, 1991)] was repealed by provisions of § 41-67-17, effective July 1, 1995.

For repeal of this section, see § 41-67-31.

Amendment Notes —

The 2018 amendment reenacted the section without change.

Cross References —

Penalty for violation of subsection (2) of this section, see § 41-67-28.

RESEARCH REFERENCES

Am. Jur.

61C Am. Jur. 2d, Pollution Control § 1943.

§ 41-67-12. Assessment of fees [Repealed effective July 1, 2020; Repealed effective July 1, 2023; see also Editor's note].

(1) The department shall assess fees in the following amounts for the following purposes:

(a) A fee of One Hundred Dollars ($100.00) shall be levied for soil and site evaluation and recommendation of individual on-site wastewater disposal systems. The department may increase the amount of the fee authorized in this paragraph (a) not more than two (2) times during the period from July 1, 2016, through June 30, 2020, with the percentage of each increase being not more than five percent (5%) of the amount of the fee in effect at the time of the increase.

(b) A fee of One Hundred Fifty Dollars ($150.00) shall be levied once every three (3) years for the certification of installers and pumpers.

(c) A fee of Three Hundred Dollars ($300.00) shall be levied once every three (3) years for the registration of manufacturers.

Any increase in the fee charged by the department under paragraph (b) or (c) of this subsection shall be in accordance with the provisions of Section 41-3-65.

(2) In the discretion of the board, a person shall be liable for a penalty equal to one and one-half (1-½) times the amount of the fee due and payable for failure to pay the fee on or before the date due, plus any amount necessary to reimburse the cost of collection.

(3) No fee authorized under this section shall be assessed by the department for state agencies or institutions, including, without limitation, foster homes licensed by the Mississippi Department of Human Services.

HISTORY:

Laws, 1996, ch. 516, § 12; reenacted without change, Laws, 2001, ch. 578, § 12; reenacted without change, Laws, 2002, ch. 493, § 12; reenacted without change, Laws, 2003, ch. 525, § 12; reenacted without change, Laws, 2005, ch. 545, § 12; reenacted without change, Laws, 2006, ch. 391, § 11; reenacted without change, Laws, 2008, ch. 563, § 11; reenacted without change, Laws, 2011, ch. 544, § 11; reenacted and amended, Laws, 2013, ch. 513, § 11; Laws, 2016, ch. 510, § 16, eff from and after July 1, 2016; reenacted and amended, Laws, 2018, ch. 346, § 11, eff from and after July 1, 2018.

Editor's Notes —

A prior § 41-67-12 [Laws, 1986, ch. 371, § 4; 1989, ch. 313, § 3; Laws, 1989, ch. 547, § 3; reenacted, Laws, 1989, ch. 555, § 4; reenacted and amended, Laws, 1991, ch. 616, § 6; Laws, 1992, ch. 536, § 7, eff from and after July 1, 1992] was repealed by provisions of § 41-67-17, effective July 1, 1995.

This section was amended by § 16 of Chapter 510, Laws of 2016, and was subject to the repealer contained in § 65 of that act, effective July 1, 2020. The section is also included within the span of sections repealed by § 41-67-31, which was amended by § 19 of Chapter 346, Laws of 2018, to extend the date of the repealer to July 1, 2023. The section is subject to both repealers.

For repeal of this section, see § 41-67-31.

Laws of 2016, ch. 510, § 65 provides:

"SECTION 65. This act shall stand repealed on July 1, 2020."

Amendment Notes —
The 2018 amendment, in (1), rewrote (b), which read: "A fee of Fifty Dollars ($50.00) shall be levied annually for the certification of installers and pumpers," and (c), which read: "A fee of One Hundred Dollars ($100.00) shall be levied annually for the registration of manufacturers."

§ 41-67-13. Repealed.

Repealed by provisions of § 41-67-17, eff July 1, 1995.

[Laws, 1978, ch. 455, § 4; Laws, 1987, ch. 512 § 4; Laws, 1989, ch. 555, § 5; Laws, 1991, ch. 616, § 7]

Editor's Notes —
Former § 41-67-13 was entitled: Waiver of economic feasibility study requirement.

§ 41-67-15. Authority of municipalities and boards of supervisors to adopt more restrictive ordinances not impaired; Department of Health prohibited from approving system that does not comply with more restrictive ordinances [Repealed effective July 1, 2023].

Nothing in this chapter shall limit the authority of a municipality or board of supervisors to adopt similar ordinances which may be, in whole or in part, more restrictive than this chapter, and in those cases the more restrictive ordinances will govern. The department shall not approve any system that does not comply with an ordinance adopted by a municipality or board of supervisors under the authority of this section.

HISTORY:
Laws, 1996, ch. 516, § 13; reenacted without change, Laws, 2001, ch. 578, § 13; reenacted without change, Laws, 2002, ch. 493, § 13; reenacted without change, Laws, 2003, ch. 525, § 13; reenacted without change, Laws, 2005, ch. 545, § 13; reenacted without change, Laws, 2006, ch. 391, § 12; reenacted and amended, Laws, 2008, ch. 563, § 12; reenacted without change, Laws, 2011, ch. 544, § 12; reenacted without change, Laws, 2013, ch. 513, § 12, eff from and after July 1, 2013; reenacted without change, Laws, 2018, ch. 346, § 12, eff from and after July 1, 2018.

Editor's Notes —
A prior § 41-67-15 [Laws, 1978, ch. 455, § 5; brought forward, Laws, 1991, ch. 616, § 8, eff from and after passage (approved May 3, 1991)] was repealed by provisions of § 41-67-17, effective July 1, 1995.

For repeal of this section, see § 41-67-31.

Amendment Notes —
The 2018 amendment reenacted the section without change.

JUDICIAL DECISIONS

ANALYSIS

1. Authority of utility districts.
2. Authority to regulate wastewater systems.

1. Authority of utility districts.
Although Miss. Code Ann. § 41-67-15 makes no mention of utility districts, the statutory scheme of Miss. Code Ann. § 41-67-1 et seq. does not prohibit water and/or sewer districts from regulating individual on-site wastewater systems. Green v. Cleary Water, Sewer & Fire Dist., 910 So. 2d 1022, 2005 Miss. LEXIS 394 (Miss. 2005), cert. denied, 547 U.S. 1098, 126 S. Ct. 1883, 164 L. Ed. 2d 568, 2006 U.S. LEXIS 3287 (U.S. 2006).

2. Authority to regulate wastewater systems.

Residents argued that water and sewer districts were without power to regulate individual septic tank systems, but the Supreme Court concluded that these districts were not without authority to regulate on-site wastewater systems. Green v. Cleary Water, Sewer & Fire Dist., 910 So. 2d 1022, 2005 Miss. LEXIS 394 (Miss. 2005), cert. denied, 547 U.S. 1098, 126 S. Ct. 1883, 164 L. Ed. 2d 568, 2006 U.S. LEXIS 3287 (U.S. 2006).

OPINIONS OF THE ATTORNEY GENERAL

A county may adopt an ordinance requiring all property owners to request the Mississippi State Department of Health to approve the design, construction and installation of any system which would require a waste water disposal system pursuant to this chapter. 1999 Miss. Op. Att'y Gen. 407.

The Mississippi State Department of Health is the proper party to approve the design, construction, and installation of an on-site waste water disposal system when so requested; thus, a county may adopt an ordinance requiring all property owners to request the Mississippi State Health Department to approve the design, construction, or installation of such a system. Thompson, Jr., 2001 Miss. Op. Att'y Gen. 627.

§ 41-67-16. Repealed.

Repealed by Laws, 2008, ch. 563, § 24, effective July 1, 2009.

§ 41-67-16. [Laws, 1996, ch. 516, § 14; reenacted without change, Laws, 2001, ch. 578, § 14; reenacted without change, Laws, 2002, ch. 493, § 14; reenacted without change, Laws, 2003, ch. 525, § 14; reenacted without change, Laws, 2005, ch. 545, § 14; reenacted without change, Laws, 2006, ch. 391, § 13; Laws, 2008, ch. 563, § 24, effective from and after July 1, 2009.]

Editor's Notes —

This section was repealed by the provisions of § 41-67-31, effective July 1, 2009. The section was also repealed by Laws of 2008, ch. 563, § 24, effective July 1, 2009.

Former § 41-67-16 required a study of all individual on-site wastewater disposal systems.

§ 41-67-17. Repealed.

Repealed by Laws, 1996, ch. 516, § 23, eff from and after July 1, 1996. [Laws, 1991, ch. 616, § 10; Laws, 1992, ch. 536, § 15]

Editor's Notes —

Laws of 1987, ch. 512, § 6, provided for the repeal of sections 41-67-3 through 41-67-7 and 41-67-13, from and after July 1, 1989. Subsequently, Laws of 1989, ch. 555, § 6, amended Section 6 of ch. 512, Laws of 1987, deleting the repeal provision. Thereafter, Laws of 1989, ch. 555, § 7, provided for the repeal of sections 41-67-3 through 41-67-7, 41-67-12 and 41-67-13 from and after July 1, 1991. Subsequently, Laws of 1991, ch. 616, § 9, amended Section 7, ch. 555, Laws of 1989, deleting the repeal provision. However, Laws of 1991, ch. 616, § 10, added a new section, 41-67-17, providing for the repeal of sections 41-67-1 through 41-67-15.

Former § 41-67-17 was entitled: Repeal of §§ 41-67-1 through 41-67-15.

§ 41-67-19. Demonstrable competence of agents; implementing chapter; completion of department's certification training [Repealed effective July 1, 2023].

Each authorized agent of the department implementing this chapter shall demonstrate to the department's satisfaction that the person:

(a) Is competent to review and provide any requested approval of design and installation of individual on-site wastewater disposal systems, as well as the operation, repair or maintenance of those systems, to make soil permeability tests or soil and site evaluations, and to conduct inspections of individual on-site wastewater disposal systems in accordance with this chapter and rules and regulations adopted under this chapter; and

(b) Has successfully completed the department's certification training program.

HISTORY:

Laws, 1992, ch. 536, § 8; Laws, 1996, ch. 516, § 15; reenacted without change, Laws, 2001, ch. 578, § 15; reenacted without change, Laws, 2002, ch. 493, § 15; reenacted without change, Laws, 2003, ch. 525, § 15; reenacted without change, Laws, 2005, ch. 545, § 15; reenacted without change, Laws, 2006, ch. 391, § 14; reenacted without change, Laws, 2008, ch. 563, § 13; reenacted without change, Laws, 2011, ch. 544, § 13; reenacted and amended, Laws, 2013, ch. 513, § 13, eff from and after July 1, 2013; reenacted without change, Laws, 2018, ch. 346, § 13.

Editor's Notes —

For repeal of this section, see § 41-67-31.

Amendment Notes —

The 2018 amendment reenacted the section without change.

§ 41-67-21. Owner repair of malfunctioning disposal system; abatement of health hazards; penalty for violations [Repealed effective July 1, 2023].

(1) The department shall require a property owner and/or lessee to repair a malfunctioning individual on-site wastewater disposal system on the owner's or lessee's property before the thirtieth day after the date on which the owner or lessee is notified by the department of the malfunctioning system.

(2) The property owner and/or lessee shall take adequate measures as soon as practicable to abate an immediate health hazard.

(3) If an existing residential individual on-site wastewater disposal system is malfunctioning, the system shall be repaired to reduce the volume of effluent, to adequately treat the effluent and to the greatest extent possible, to confine the discharge to the property of the generator. If repairs are made to significantly upgrade the existing individual on-site wastewater disposal system, the department shall approve the system, if requested.

(4) The property owner or lessee may be assessed a civil penalty not to exceed Five Dollars ($5.00) for each day the individual on-site wastewater disposal system remains unrepaired after the thirty-day period specified in subsection (1) of this section.

(5) The board may assess the property owner or lessee of an individual on-site wastewater disposal system authorized under Section 41-67-3(3) a civil penalty not to exceed Five Dollars ($5.00) for each day the system fails to meet the performance standards of that system after the thirty-day period specified in subsection (1) of this section.

(6) All penalties collected by the board under this section shall be deposited in the State General Fund.

(7) Appeals from the imposition of civil penalty under this section may be taken as provided in Section 41-67-29.

HISTORY:

Laws, 1992, ch. 536, § 9; Laws, 1996, ch. 516, § 16; reenacted without change, Laws, 2001, ch. 578, § 16; reenacted without change, Laws, 2002, ch. 493, § 16; reenacted without change, Laws, 2003, ch. 525, § 16; reenacted without change, Laws, 2005, ch. 545, § 16; reenacted without change, Laws, 2006, ch. 391, § 15; reenacted without change, Laws, 2008, ch. 563, § 14; reenacted without change, Laws, 2011, ch. 544, § 14; reenacted and amended, Laws, 2013, ch. 513, § 14, eff from and after July 1, 2013; reenacted without change, Laws, 2018, ch. 346, § 14, eff from and after July 1, 2018.

Editor's Notes —

For repeal of this section, see § 41-67-31.

Amendment Notes —

The 2018 amendment reenacted the section without change.

Cross References —

Owners of property on which existing individual on-site wastewater disposal system does not meet the requirements of § 41-67-9(2) are required to meet this section or § 41-67-6, see § 41-67-9.

§ 41-67-23. Inspection by Department where Department approval requested [Repealed effective July 1, 2023].

The department or its authorized representative may enter onto property and make inspections of any individual on-site wastewater disposal system as necessary to ensure that the system is in compliance with this chapter and the rules and regulations adopted under this chapter. The department shall give reasonable notice to any property owner, lessee or occupant prior to entry onto the property. The owner, lessee, owner's representative, or occupant of the property on which the system is located shall give the department or its authorized representative reasonable access to the property at reasonable times to make necessary inspections.

HISTORY:

Laws, 1992, ch. 536, § 10; Laws, 1996, ch. 516, § 17; reenacted without change, Laws, 2001, ch. 578, § 17; reenacted without change, Laws, 2002, ch. 493, § 17; reenacted without change, Laws, 2003, ch. 525, § 17; reenacted without change, Laws, 2005, ch. 545, § 17; reenacted without change, Laws, 2006, ch. 391, § 16; reenacted without change, Laws, 2008, ch. 563, § 15; reenacted without change, Laws, 2011, ch. 544, § 15; reenacted and amended, Laws, 2013, ch. 513, § 15, eff from and after July 1, 2013; reenacted without change, Laws, 2018, ch. 346, § 15, eff from and after July 1, 2018.

Editor's Notes —

For repeal of this section, see § 41-67-31.

Amendment Notes —

The 2018 amendment reenacted the section without change.

OPINIONS OF THE ATTORNEY GENERAL

Based on the requirement set forth in Section 41-67-23 that the Department of Health inspect wastewater systems at the behest of the property owner, or his lender, coupled with the authority to charge and collect reasonable fees for health services as set out in Section 41-3-15(4)(f), the Department of Health may recoup actual costs associated with its obligations imposed in Section 41-67-23. 1995 Miss. Op. Att'y Gen. 240.

RESEARCH REFERENCES

Am. Jur.

61C Am. Jur. 2d, Pollution Control § 1943.

§ 41-67-25. Certification of installers required; exception; renewal; revocation; certified installers listed; penalty for operating without certification [Repealed effective July 1, 2020; Repealed effective July 1, 2023; see also Editor's note].

(1) A person may not operate as an installer of individual on-site wastewater disposal systems unless that person is currently certified by the department. A person who installs an individual on-site wastewater disposal system on his own property for his primary residence is not considered an installer for purposes of this subsection.

(2) An installer of advanced treatment systems or products must be a factory-trained and authorized representative. The manufacturer must furnish documentation to the department certifying the satisfactory completion of factory training and the establishment of the installer as an authorized manufacturer's representative.

(3) The department shall issue a certification to an installer if the installer:

(a) Completes an application form that complies with this chapter and rules and regulations adopted by the board;

(b) Satisfactorily completes the training program for installation and maintenance provided by the department;

(c) Pays the certification fee once every three (3) years, which shall be an amount not greater than One Hundred Fifty Dollars ($150.00); any increase in the fee charged by the department under this paragraph shall be in accordance with the provisions of Section 41-3-65; and

(d) Provides proof of having a valid general business liability insurance policy in effect with liability limits of at least Fifty Thousand Dollars ($50,000.00) per occurrence and at least One Hundred Thousand Dollars ($100,000.00) in total aggregate amount.

(4) Each installer shall furnish proof of certification to a property owner, lessee, the owner's representative or occupant of the property on which an individual on-site wastewater disposal system is to be designed, constructed, repaired or installed by that installer and to the department or its authorized representative, if requested.

(5) The department shall provide for renewal of certifications once every three (3) years.

(6)(a) An installer's certification may be suspended or revoked by the department after notice and hearing if the installer violates this chapter or any rule or regulation adopted under this chapter.

(b) The installer may appeal a suspension or revocation under this section as provided by law.

(7) The department shall disseminate to the public an official list of certified installers.

(8) If any person is operating in the state as an installer without certification by the board, the board, after due notice and opportunity for a hearing, may impose a monetary penalty not to exceed Ten Thousand Dollars ($10,000.00) for each violation.

(9) The department shall provide for renewal of installer certifications to be applied for at the local department offices.

HISTORY:

Laws, 1992, ch. 536, § 11; Laws, 1996, ch. 516, § 18; reenacted and amended, Laws, 2001, ch. 578, § 18; reenacted without change, Laws, 2002, ch. 493, § 18; reenacted without change, Laws, 2003, ch. 525, § 18; reenacted without change, Laws, 2005, ch. 545, § 18; reenacted without change, Laws, 2006, ch. 391, § 17; reenacted and amended, Laws, 2008, ch. 563, § 16; reenacted and amended, Laws, 2011, ch. 544, § 16; reenacted and amended, Laws, 2013, ch. 513, § 16; Laws, 2016, ch. 510, § 17, eff from and after July 1, 2016; reenacted and amended, Laws, 2018, ch. 346, § 16, eff from and after July 1, 2018.

Editor's Notes —

This section was amended by § 17 of Chapter 510, Laws of 2016, and was subject to the repealer contained in § 65 of that act, effective July 1, 2020. The section is also included within the span of sections repealed by § 41-67-31, which was amended by § 19 of Chapter 346, Laws of 2018, to extend the date of the repealer to July 1, 2023. The section is subject to both repealers.

For repeal of this section, see § 41-67-31.

Laws of 2016, ch. 510, § 65 provides:

"SECTION 65. This act shall stand repealed on July 1, 2020."

Amendment Notes —

The 2018 amendment reenacted and amended the section by rewriting (3)(c), which read: "Pays the annual certification fee, which shall be an amount not greater than Fifty Dollars ($50.00); any increase in the fee charged by the department under this paragraph shall be in accordance with the provisions of Section 41-3-65; and"; in (5), deleted "annual" preceding "renewal" and added "once every three (3) years" at the end; and deleted "annual" preceding "renewal" in (8).

§ 41-67-27. Registration required for manufacturers of individual on-site wastewater disposal system components to operate or do business in state; penalties [Repealed effective July 1, 2023].

A person may not operate a business in or do business in the State of Mississippi as a manufacturer of components used in an individual on-site wastewater disposal system without holding a valid manufacturer's registration issued by the department. If any person is operating in the state as a manufacturer without certification by the department, the department, after due notice and opportunity for a hearing, may impose a monetary penalty not to exceed Ten Thousand Dollars ($10,000.00) for each violation.

HISTORY:

Laws, 1992, ch. 536, § 12; Laws, 1996, ch. 516, § 19; reenacted without change, Laws, 2001, ch. 578, § 19; reenacted without change, Laws, 2002, ch. 493, § 19; reenacted without change, Laws, 2003, ch. 525, § 19; reenacted without change, Laws, 2005, ch. 545, § 19; reenacted without change, Laws, 2006, ch. 391, § 18; reenacted and amended, Laws, 2008, ch. 563, § 17; reenacted without change, Laws, 2011, ch. 544, § 17; reenacted and amended, Laws, 2013, ch. 513, § 17, eff from and after July 1, 2013; reenacted without change, Laws, 2018, ch. 346, § 17, eff from and after July 1, 2018.

Editor's Notes —

For repeal of this section, see § 41-67-31.

Amendment Notes —

The 2018 amendment reenacted the section without change.

§ 41-67-28. Violations; penalties and damages [Repealed effective July 1, 2023].

(1) Except as otherwise provided in this chapter, any person who shall knowingly violate this chapter or any rule or regulation or written order of the

board in pursuance thereof is, upon conviction, guilty of a misdemeanor and shall be punished as provided in Section 41-3-59.

(2) Each day of a continuing violation is a separate violation.

(3)(a) In addition to all other statutory and common law rights, remedies and defenses, any person who purchases an individual on-site wastewater disposal system and suffers any ascertainable loss of money or property, real or personal, may bring an action at law in the court having jurisdiction in the county in which the installer or manufacturer has the principal place of business, where the act allegedly occurred, to recover any loss of money or damages for the loss of any property resulting from any of the following:

(i) Improper installation of an individual on-site wastewater disposal system due to faulty workmanship;

(ii) Failure of an individual on-site wastewater disposal system to operate properly due to failure to install the system in accordance with any requirements of the manufacturer or in compliance with any rules and regulations of the board; or

(iii) Failure of an individual on-site wastewater disposal system to operate properly due to installation.

(b) Nothing in this chapter shall be construed to permit any class action or suit, but every private action must be maintained in the name of and for the sole use and benefit of the individual person.

(4) A person who violates this chapter thereby causing a discharge off the property of the generator shall be liable to the party aggrieved or damaged by that violation for the actual damages and additional punitive damages equal to a maximum of twenty-five percent (25%) of the actual damages proven by the aggrieved party, to be taxed by the court where the suit is heard on an original action, by appeal or otherwise and recovered by a suit at law in any court of competent jurisdiction. In addition, the court may award the prevailing party reasonable attorney's fees and court costs. Before filing suit, the party aggrieved or damaged must give thirty (30) days' written notice of its intent to file suit to the alleged violator.

(5)(a) Any person who violates Section 41-67-7(5) or 41-67-11(2) may be assessed an administrative fine in the amount of Five Hundred Dollars ($500.00) and the public water system may discontinue service to that property owner until the failure to comply with Section 41-67-7(5) or 41-67-11(2) has been corrected.

(b) All violators shall be given thirty (30) days' notice before any adverse action.

(c) Any violator shall have the right to appeal an adverse determination through the procedures set out in Section 41-67-29.

HISTORY:

Laws, 1992, ch. 536, § 13; Laws, 1996, ch. 516, § 20; reenacted without change, Laws, 2001, ch. 578, § 20; reenacted without change, Laws, 2002, ch. 493, § 20; reenacted without change, Laws, 2003, ch. 525, § 20; reenacted without change, Laws, 2005, ch. 545, § 20; reenacted without change, Laws, 2006, ch. 391, § 19; reenacted and amended, Laws, 2008, ch. 563, § 18; reenacted without change, Laws, 2011, ch. 544, § 18; reenacted and amended, Laws, 2013, ch. 513, § 18, eff from and after July 1, 2013.

Editor's Notes —

For repeal of this section, see § 41-67-31.

Cross References —

Punitive damages, generally, see § 11-1-65.

OPINIONS OF THE ATTORNEY GENERAL

Under Sections 41-67-28 and 21-13-1, the Legislature has already placed limits on penalties for violations of municipal ordinances, therefore a municipality may not pass an ordinance making each day of a continuing violation a separate offense, in the absence of a statute so providing. 1996 Miss. Op. Att'y Gen. 28.

RESEARCH REFERENCES

Am. Jur.

20 Am. Jur. Pl & Pr Forms (Rev), Pollution Control, Form 63 (complaint, petition, or declaration – by property owner against municipality – to enjoin issuance of building permits in subdivision with inadequate sanitary services – to require sewage facilities – to recover damages caused by inadequate facilities).

CJS.

39A C.J.S., Health and Environment §§ 156–164.

§ 41-67-29. Appeals [Repealed effective July 1, 2023].

Any person who is aggrieved by any final decision of the board may appeal that final decision to the chancery court of the county of the situs in whole or in part of the subject matter. The appellant shall give a cost bond with sufficient sureties, payable to the state in a sum to be fixed by the board or the court and to be filed with and approved by the clerk of the court. The aggrieved party may, within thirty (30) days following a final decision of the board, petition the chancery court for an appeal with supersedeas and the chancellor shall grant a hearing on the petition. Upon good cause shown the chancellor may grant the appeal with supersedeas. The appellant shall be required to post a bond with sufficient sureties according to law in an amount to be determined by the chancellor. The chancery court shall always be deemed open for hearing of appeals and the chancellor may hear the appeal in termtime or in vacation at any place in his district. The appeal shall have precedence over all civil cases, except election contests. The chancery court shall review all questions of law and of fact and may enter a final order or remand the matter to the board for appropriate action as may be indicated or necessary under the circumstances. Appeals may be taken from the chancery court to the Supreme Court in the manner as now required by law, but if a supersedeas is desired by the party appealing to the chancery court, that party may apply therefor to the chancellor, who shall award a writ of supersedeas, without additional bond, if in the chancellor's judgment material damage is not likely to result. If material damage is likely to result, the chancellor shall require a supersedeas bond as deemed proper, which shall be liable to the state for any damage.

HISTORY:

Laws, 1992, ch. 536, § 14; Laws, 1996, ch. 516, § 21; reenacted without change, Laws, 2001, ch. 578, § 21; reenacted without change, Laws, 2002, ch. 493, § 21; reenacted without change, Laws, 2003, ch. 525, § 21; reenacted without change, Laws, 2005, ch. 545, § 21; reenacted without change, Laws, 2006, ch. 391, § 20; reenacted without change, Laws, 2008, ch. 563, § 19; reenacted without change, Laws, 2011, ch. 544, § 19; reenacted without change, Laws, 2013, ch. 513, § 19, eff from and after July 1, 2013; reenacted without change, Laws, 2018, ch. 346, § 18, eff from and after July 1, 2018.

Editor's Notes —

For repeal of this section, see § 41-67-31.

Amendment Notes —

The 2018 amendment reenacted the section without change.

§ 41-67-31. Repeal of Sections 41-67-1 through 41-67-29 and Sections 41-67-33 through 41-67-41.

Sections 41-67-1 through 41-67-29 and Sections 41-67-33 through 41-67-41 shall stand repealed on July 1, 2023.

HISTORY:

Laws, 1996, ch. 516, § 24; Laws, 2001, ch. 578, § 22; Laws, 2002, ch. 493, § 22; Laws, 2003, ch. 525, § 22; Laws, 2005, ch. 545, § 22; Laws, 2006, ch. 391, § 21; Laws, 2008, ch. 511, § 1; Laws, 2008, ch. 563, § 25; Laws, 2011, ch. 544, § 25; Laws, 2013, ch. 513, § 25, eff from and after July 1, 2013; Laws, 2018, ch. 346, § 19, eff from and after July 1, 2018.

Joint Legislative Committee Note —

Section 1 of ch. 511, Laws of 2008, effective upon passage (approved May 8, 2008), amended this section. Section 25 of ch. 563, Laws of 2008, effective from and after July 1, 2009 (approved May 12, 2008), also amended this section. The amendments to these sections do not conform and do not meet the Joint Committee's criteria for integration. In this case, Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier, controls, and as set out above, this section reflects the language of Section 25 of ch. 563, Laws of 2008.

Amendment Notes —

The 2018 amendment extended the date of the repealer for §§ 41-67-1 through 41-67-29 and §§ 41-67-33 through 41-67-41 by substituting "July 1, 2023" for "July 1, 2018."

§ 41-67-33. Procedures for conducting reviews requested by persons aggrieved by disapproval or requirements for on-site wastewater disposal system; application for variance; hearing; final decision by State Health Officer [Repealed effective July 1, 2023].

(1) The department shall adopt and use procedures for conducting reviews requested by any person aggrieved by the disapproval or requirements for an on-site wastewater disposal system as provided by the department in written form under Section 41-67-6. The procedures shall include that the person may request review by submitting a written request of review to the Director of the Office of Environmental Health. The request for review shall identify the matter contested and state the person's name, mailing address and home and daytime phone numbers. Within ten (10) business days of the receipt of the request for review, the department shall issue in writing a ruling and determination to the person and if any corrections are necessary to any form previously issued by the department, then new forms shall be submitted to the person.

(2) Property owners may apply for a variance from the department by submitting a report for a proposed system to the department from a licensed

professional engineer that the proposed wastewater treatment system will properly treat and maintain wastewater on the property and proof that the licensed professional engineer has errors and omissions insurance. The department shall grant the variance but still have authority for final approval to inspect that the system is installed as designed. All forms from the department relating to allowed wastewater systems shall include the variance option.

(3) Any person aggrieved by the ruling issued by the Director of the Office of Environmental Health may apply for a hearing. Any hearing shall be conducted by a hearing officer designated by the department. At the hearing, the hearing officer may conduct reasonable questioning of persons who make relevant factual allegations concerning the proposal. The hearing officer shall require that all persons be sworn before they may offer any testimony at the hearing, and the hearing officer is authorized to administer oaths. Any person so choosing may be represented by counsel at the hearing. A record of the hearing shall be made, which shall consist of a transcript of all testimony received, all documents and other material introduced, the staff report and recommendation, and any other material as the hearing officer considers relevant. He shall make a recommendation within a reasonable period of time after the hearing is closed and after he has had an opportunity to review, study and analyze the evidence presented during the hearing. The completed record shall be certified to the State Health Officer, who shall consider only the record in making his decision, and shall not consider any evidence or material that is not included. All final decisions regarding the disapproval or requirements for an on-site wastewater disposal system shall be made by the State Health Officer. The State Health Officer shall make his written findings and issue his order after reviewing the record, not to exceed thirty (30) days following his receipt of the record.

HISTORY:

Laws, 2008, ch. 563, § 20; reenacted without change, Laws, 2011, ch. 544, § 20; reenacted and amended, Laws, 2013, ch. 513, § 20, eff from and after July 1, 2013; reenacted without change, Laws, 2018, ch. 346, § 20, eff from and after July 1, 2018.

Editor's Notes —

For repeal of this section, see § 41-67-31.

Amendment Notes —

The 2018 amendment reenacted the section without change.

§ 41-67-35. Repealed.

Repealed by Laws of 2013, ch. 513, § 21, effective July 1, 2013.

§ 41-67-35. [Laws, 2008, ch. 563, § 21; reenacted and amended, Laws, 2011, ch. 544, § 21, eff from and after passage (approved Apr. 26, 2011).]

Editor's Notes —

Former § 41-67-35 prohibited a person from operating as a maintenance provider unless the person is certified as one by the department or is a certified installer. For present similar provisions, see § 41-67-37.

§ 41-67-37. Certified professional evaluator; certification requirements; renewal; official list of certified professional evaluators; penalty for operating without certification [Repealed effective July 1, 2020; Repealed effective July 1, 2023; see Editor's note].

(1) A person may not operate as a certified professional evaluator in this state unless that person is currently certified by the department or is a licensed professional engineer.

(2) A person must meet one (1) of the following requirements, in addition to the additional requirements set forth in other sections of this chapter and rules and regulations of the board, in order to be eligible to become a certified professional evaluator:

(a) Be a professional geologist registered in the State of Mississippi;

(b) Be a professional soil classifier licensed in the State of Mississippi; or

(c) Be a person who possesses a demonstrable, adequate and appropriate record of professional experience and/or training as determined by the department.

(3) The department shall issue a certification to a certified professional evaluator if the certified professional evaluator:

(a) Completes an application form that complies with this chapter and rules adopted under this chapter;

(b) Satisfactorily completes the certified professional evaluator training program provided by the department;

(c) Pays the certification fee once every three (3) years; any increase in the fee charged by the department under this paragraph shall be in accordance with the provisions of Section 41-3-65; and

(d) Provides proof of having an errors and omissions policy or surety in effect with liability limits of at least Fifty Thousand Dollars ($50,000.00) per occurrence and at least One Hundred Thousand Dollars ($100,000.00) in total aggregate amount.

(4) Each certified professional evaluator shall furnish proof of certification to a property owner or the owner's representative of the property before performing a site evaluation of the property on which an individual on-site wastewater disposal system is to be designed, constructed, repaired or installed by the certified professional evaluator and to the department or its authorized representative, if requested.

(5) The department shall provide for renewal of certifications once every three (3) years.

(6) The department shall disseminate to the public an official list of certified professional evaluators.

(7) If any person who is not a licensed professional engineer operates in the state as a certified professional evaluator without certification by the department, the department, after due notice and opportunity for a hearing, may impose a monetary penalty not to exceed Ten Thousand Dollars ($10,000.00) for each violation.

HISTORY:

Laws, 2008, ch. 563, § 23; reenacted and amended, Laws, 2011, ch. 544, § 22; reenacted and amended, Laws, 2013, ch. 513, § 22; Laws, 2016, ch. 510, § 18, eff from and after July 1, 2016; reenacted and amended, Laws, 2018, ch. 346, § 21, eff from and after July 1, 2018.

Editor's Notes —

This section was amended by § 18 of Chapter 510, Laws of 2016, and was subject to the repealer contained in § 65 of that act, effective July 1, 2020. The section is also included within the span of sections repealed by § 41-67-31, which was amended by § 19 of Chapter 346, Laws of 2018, to extend the date of the repealer to July 1, 2023. The section is subject to both repealers.

For repeal of this section, see § 41-67-31.

Laws of 2016, ch. 510, § 65 provides:

"SECTION 65. This act shall stand repealed on July 1, 2020."

Amendment Notes —

The 2018 amendment reenacted and amended the section by substituting "Pays the certification fee once every three (3) years" for "Pays the annual certification fee" in (3)(c), and "provide for renewal of certifications once every three (3) years" for "provide for annual renewal of certifications" in (5).

§ 41-67-39. Certificate required for person operating as pumper removing and disposing of sludge from on-site wastewater disposal systems; certificate requirements; official list of certified pumpers; penalty for operating without license; suspension or revocation of pumper certification; grounds; renewal [Repealed effective July 1, 2020; Repealed effective July 1, 2023; see Editor's note].

(1) A person may not be engaged in the business of removing and disposing of the sludge and liquid waste (septage) from individual on-site wastewater disposal systems in this state unless that person has a valid certificate issued by the department.

(2) The department shall issue a certificate to a pumper if the pumper:

(a) Completes an application form that complies with this chapter and rules adopted under this chapter;

(b) Satisfactorily completes the certified pumper training program provided by the department;

(c) Satisfactorily complies with the requirements of his/her pumping and hauling equipment;

(d) Provides documentation of a disposal site approved by the Department of Environmental Quality, Office of Pollution Control;

(e) Pays the license fee once every three (3) years; any increase in the fee charged by the department under this paragraph shall be in accordance with the provisions of Section 41-3-65; and

(f) Provides proof of having a valid general business liability insurance policy in effect with liability limits of at least Fifty Thousand Dollars ($50,000.00) per occurrence and at least One Hundred Thousand Dollars ($100,000.00) in total aggregate amount.

(3) Each pumper or designated agent thereof, upon request, shall furnish proof of certification to an individual before entering a contract with that individual for the removing and disposing of the sludge and liquid waste (septage) from an individual on-site wastewater disposal system.

(4) The department shall disseminate to the public an official list of certified pumpers.

(5) If any person operates in the state as a certified pumper without a license by the board, the board, after due notice and opportunity for a hearing, may impose a monetary penalty not to exceed Ten Thousand Dollars ($10,000.00) for each violation.

(6) The department may suspend or revoke a pumper certification if the pumper disposes of septage or other liquid waste in an unpermitted or unapproved site and/or violates this chapter or rules and regulations under this chapter.

(7) A municipal wastewater treatment facility may make a site available for certified pumpers to dispose of septic or other liquid waste.

(8) The department shall provide for renewal of certifications once every three (3) years.

(9) The department must provide for renewal pumper certifications to be applied for at the local department offices.

HISTORY:

Laws, 2008, ch. 563, § 22; reenacted and amended, Laws, 2011, ch. 544, § 23; reenacted and amended, Laws, 2013, ch. 513, § 23; Laws, 2016, ch. 510, § 19, eff from and after July 1, 2016; reenacted and amended, Laws, 2018, ch. 346, § 22, eff from and after July 1, 2018.

Editor's Notes —

This section was amended by § 19 of Chapter 510, Laws of 2016, and was subject to the repealer contained in § 65 of that act, effective July 1, 2020. The section is also included within the span of sections repealed by § 41-67-31, which was amended by § 19 of Chapter 346, Laws of 2018, to extend the date of the repealer to July 1, 2023. The section is subject to both repealers.

For repeal of this section, see § 41-67-31.

Laws of 2016, ch. 510, § 65 provides:

"SECTION 65. This act shall stand repealed on July 1, 2020."

Amendment Notes —

The 2018 amendment reenacted and amended the section by substituting "Pays the license fee once every three (3) years" for "Pays the annual license fee" in (2)(e), and "provide for renewal of certifications once every three (3) years" for "provide for annual renewal of certifications" in (8).

§ 41-67-41. Wastewater Advisory Council created; purpose; composition [Repealed effective July 1, 2023].

(1) There is created the Wastewater Advisory Council for the purpose of advising the department regarding individual on-site wastewater disposal systems. The advisory council shall be composed of the following:

(a) One (1) appointee of the State Health Officer;

(b) One (1) appointee of the Chairman of the State Board of Health;

(c) One (1) appointee of the Chairman of the State Board of Health that represents a Mississippi Aerobic Treatment Unit (ATU) manufacturer;

(d) One (1) appointee of the Chairman of the State Board of Health that represents a certified installer;

(e) One (1) appointee of the Chairman of the State Board of Health that represents a septic tank or aggregate disposal manufacturer;

(f) One (1) appointee of the Executive Director of the Mississippi Department of Environmental Quality;

(g) One (1) appointee of the Executive Director of the Office of Pollution Control;

(h) One (1) appointee of the Executive Director of the Mississippi Soil and Water Conservation Commission;

(i) One (1) appointee of the Director of the Mississippi State Board of Registered Professional Geologists;

(j) One (1) appointee of the Chairman of the Department of the Mississippi State University School of Civil and Environmental Engineering Companies;

(k) The federally appointed Mississippi State Soil Scientist, or his designee;

(*l*) One (1) appointee of the Executive Director of the American Council of Engineering Companies;

(m) One (1) appointee of the Executive Director of the Home Builders Association of Mississippi;

(n) One (1) appointee of the Executive Director of the Mississippi Engineering Society;

(o) One (1) appointee of the Executive Director of the Mississippi Manufactured Housing Association;

(p) One (1) appointee of the Executive Director of the Mississippi Rural Water Association;

(q) One (1) appointee of the Executive Director of the Mississippi Association of Supervisors;

(r) One (1) appointee of the President of the Mississippi Pumpers Association;

(s) One (1) appointee of the President of the Mississippi Water and Pollution Control Operators Association, Inc.;

(t) One (1) appointee of the Executive Director of the Mississippi Association of Realtors; and

(u) One (1) appointee of the Executive Director of the Mississippi Municipal League.

(2) The members of the advisory council shall elect a chairman and vice chairman from its membership.

(3) The terms of appointments for each member shall be for a period of two (2) years.

(4) The advisory council shall have quarterly meetings, with at least one (1) of those meetings taking place between forty-five (45) and sixty (60) days before the meeting of the board.

(5) The department shall staff all advisory council meetings and record minutes of those meetings.

HISTORY:

Laws, 2013, ch. 513, § 24, eff from and after July 1, 2013; reenacted without change, Laws, 2018, ch. 346, § 23, eff from and after July 1, 2018.

Editor's Notes —

For repeal of this section, see § 41-67-31.

Amendment Notes —

The 2018 amendment reenacted the section without change.

WASTEWATER ADVISORY BOARD

Sec.
41-67-101. Wastewater Advisory Board created; purpose; composition; terms; meetings.

§ 41-67-101. Wastewater Advisory Board created; purpose; composition; terms; meetings.

(1) There is created the Wastewater Advisory Board for the purpose of advising the Department of Health regarding individual on-site wastewater disposal systems. The advisory board shall be composed of the following:

(a) One (1) appointee of the Executive Director of the American Council of Engineering;

(b) One (1) appointee of the Executive Director of the Office of Pollution Control;

(c) One (1) appointee of the State Health Officer;

(d) One (1) appointee of the Executive Director of the Home Builders Association of Mississippi;

(e) One (1) appointee of the Chairman of the Mississippi State Board of Health that represents a Mississippi ATU manufacturer;

(f) One (1) appointee of the Executive Director of the Mississippi Engineering Society;

(g) One (1) appointee of the Executive Director of the Mississippi Manufactured Housing Association;

(h) One (1) appointee of the Chairman of the Mississippi State Board of Health that represents a certified installer;

(i) One (1) appointee of the Chairman of the Mississippi State Board of Health that represents a septic tank or aggregate disposal manufacturer;

(j) One (1) appointee of the Executive Director of the Mississippi Rural Water Association;

(k) One (1) appointee of the Executive Director of the Mississippi Association of Supervisors;

(*l*) One (1) appointee of the President of the Mississippi Pumpers Association;

(m) One (1) appointee of the Executive Director of the Mississippi Soil and Water Conservation Commission;

(n) One (1) appointee of the President of the Mississippi Water and Pollution Control Operators Association, Inc.;

(o) The federally appointed Mississippi State Soil Scientist, or his designee;

(p) One (1) appointee of the Director of the Mississippi State Board of Registered Professional Geologists;

(q) One (1) appointee of the Executive Director of the Mississippi Department of Environmental Quality;

(r) One (1) appointee of the Chairman of the Mississippi State Board of Health;

(s) One (1) appointee of the Executive Director of the Mississippi Association of Realtors;

(t) One (1) appointee of the Executive Director of the Mississippi Municipal League; and

(u) One (1) appointee of the Chairman of the Department of the Mississippi State University School of Civil and Environmental Engineering.

(2) The members of the advisory committee shall elect a chairman and vice chairman from its membership.

(3) The terms of appointments for each member shall be for a period of two (2) years.

(4) The advisory committee shall have quarterly meetings, with at least one (1) of those meetings taking place between forty-five (45) and sixty (60) days before the meeting of the Mississippi State Board of Health.

(5) The Mississippi Department of Health shall staff all advisory committee meetings and record minutes of those meetings.

HISTORY:

Laws, 2011, ch. 544, § 24, eff from and after passage (approved Apr. 26, 2011).

CHAPTER 69.

[RESERVED]

CHAPTER 71.

HOME HEALTH AGENCIES

Sec.	
41-71-1.	Definitions.
41-71-3.	License required to operate home health agency.
41-71-5.	Application for license; fee [Repealed effective July 1, 2020].
41-71-7.	Terms and conditions of license; renewal [Repealed effective July 1, 2020].
41-71-9.	Denial, suspension or revocation of license; notice and hearing; procedure; costs.
41-71-11.	Appeal.
41-71-13.	Rules, regulations and standards.
41-71-15.	Compliance by existing agencies.
41-71-17.	Inspections and investigations.
41-71-19.	Confidentiality of information.
41-71-21.	Penalty for violations; injunction.

§ 41-71-1. Definitions.

As used in this chapter, unless the context otherwise requires:

(a) "Home health agency" means a public or privately owned agency or organization, or a subdivision of such an agency or organization, properly authorized to conduct business in Mississippi, which is primarily engaged in providing to individuals, at the written direction of a licensed physician, in the individual's place of residence, skilled nursing services provided by or under the supervision of a registered nurse licensed to practice in Mississippi, and one or more of the following services or items:

(i) Physical, occupational or speech therapy;

(ii) Medical social services;

(iii) Part-time or intermittent services of a home health aide;

(iv) Other services as approved by the licensing agency;

(v) Medical supplies, other than drugs and biologicals, and the use of medical appliances; or

(vi) Medical services provided by an intern or resident in training at a hospital under a teaching program of such hospital.

(b) "Licensing agency" means the State Department of Health.

HISTORY:

Laws, 1981, ch. 484, § 1; Laws, 1986, ch. 437, § 21, eff from and after July 1, 1986.

Cross References —

Definition of home health agency for purposes of the Health Care Commission Law of 1979, see § 41-7-173.

Mississippi Health Care Commission, see § 41-7-175.

§ 41-71-3. License required to operate home health agency.

No person or other legal entity acting alone or in concert with others, shall establish, conduct, or maintain a home health agency without securing a license under the provisions of this chapter.

HISTORY:

Laws, 1981, ch. 484, § 2, eff from and after July 1, 1981.

§ 41-71-5. Application for license; fee [Repealed effective July 1, 2020].

An application for a license shall be made to the licensing agency upon forms provided by the agency and shall contain such information as the agency shall require, which may include affirmative evidence of ability to comply with such reasonable standards, rules and regulations as are lawfully prescribed under this chapter. A license fee of One Thousand Dollars ($1,000.00), payable to the licensing agency, shall be submitted with each application. Any increase in the fee charged by the licensing agency under this section shall be in accordance with the provisions of Section 41-3-65.

HISTORY:

Laws, 1981, ch. 484, § 3; Laws, 1986, ch. 500, § 24; Laws, 1998, ch. 433, § 2; Laws, 2016, ch. 510, § 20, eff from and after July 1, 2016.

Editor's Notes —

Laws of 2016, ch. 510, § 65 provides:

"SECTION 65. This act shall stand repealed on July 1, 2020."

Cross References —

License renewal fee, see § 41-71-7.

§ 41-71-7. Terms and conditions of license; renewal [Repealed effective July 1, 2020].

Upon receipt of an application for a license and the license fee, and a determination by the licensing agency that the application is in compliance with Section 41-7-173 et seq. and in compliance with the provisions of this chapter, such license shall be issued. A license, unless suspended or revoked, shall be renewable annually upon payment by the licensee of a renewal fee of One Thousand Dollars ($1,000.00) and upon approval by the licensing agency of an annual report, required to be submitted by the licensee, containing such information in such form and at such time as the licensing agency prescribes by rule or regulation. Any increase in the fee charged by the licensing agency under this section shall be in accordance with the provisions of Section 41-3-65. Each license shall be issued only for the home health agency and person or persons or other legal entity or entities named in the application and shall not be transferable or assignable except with the written approval of the licensing agency. Licenses shall be posted in a conspicuous place in the designated business office of the licensee. Each licensee shall designate, in writing, one (1) individual person as the responsible party for the conducting of the business of the home health agency with the licensing agency.

HISTORY:

Laws, 1981, ch. 484, § 4; Laws, 1986, ch. 437, § 22; Laws, 1986, ch. 500, § 25; Laws, 1998, ch. 433, § 3; Laws, 2016, ch. 510, § 21, eff from and after July 1, 2016.

Editor's Notes —

Laws of 2016, ch. 510, § 65 provides:

"SECTION 65. This act shall stand repealed on July 1, 2020."

Cross References —

Mississippi Health Care Certificate of Need Law of 1979, see §§ 41-7-171 through 41-7-209.

License fee, see § 41-71-5.

§ 41-71-9. Denial, suspension or revocation of license; notice and hearing; procedure; costs.

The licensing agency, after notice and opportunity for a hearing to the applicant or licensee, is authorized to deny, suspend or revoke a license in any case in which it finds that the applicant or licensee has failed to comply with the requirements established by this chapter or the rules, regulations or standards promulgated in furtherance of this chapter. Such notice shall be given by registered mail, or by personal service, setting forth the particular reasons for the proposed action and fixing a date of not less than thirty (30) days from the date of such mailing or such personal service, at which time the applicant or licensee shall be given an opportunity for a prompt and fair hearing. On the basis of any such hearing, or upon default of the applicant or licensee, the licensing agency shall make a determination specifying its findings of fact and conclusions of law. A copy of such determination shall be sent by registered mail or served personally upon the applicant or licensee. The decision revoking, suspending or denying the license or application shall become final thirty (30) days after it is so mailed or served, unless the applicant or licensee, within such thirty-day period, appeals the decision to the chancery court pursuant to Section 41-71-11. The procedure governing hearings shall be in accordance with rules and regulations promulgated by the licensing agency. A full and complete record shall be kept of all proceedings, and all testimony shall be recorded but need not be transcribed unless the decision is appealed pursuant to Section 41-71-11. Witnesses may be subpoenaed by either party. Compensation shall be allowed to witnesses as in cases in the chancery court. Each party shall pay the expense of his own witnesses. The cost of the record shall be paid by the licensing agency, but any other party desiring a copy of the transcript shall pay therefor the reasonable cost of preparing the same.

HISTORY:

Laws, 1981, ch. 484, § 5, eff from and after July 1, 1981.

RESEARCH REFERENCES

Am. Jur.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (Complaint, petition, or declaration – by license holder – against administrative agency – to enjoin further proceedings to suspend or revoke license – attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

§ 41-71-11. Appeal.

Any applicant or licensee aggrieved by the decision of the licensing agency after a hearing may, within thirty (30) days after the mailing or serving of notice of the decision, file a notice of appeal in the chancery court of the First Judicial District of Hinds County, Mississippi, or the chancery court of the county in which the home health agency is located or to be located, and the chancery clerk shall serve a copy of the notice of appeal upon the licensing agency. Thereupon the licensing agency shall, within sixty (60) days or such additional time as the court may allow from the filing of such notice, certify to the court a copy of the record and decision, including the transcript of the hearings on which the decision is based. Findings of fact by the licensing agency shall be conclusive unless substantially contrary to the weight of the evidence, but upon good cause shown, the court may remand the case to the licensing agency to take further evidence, and the licensing agency may thereupon affirm, reverse or modify its decision. The court may affirm, modify or reverse the decision of the licensing agency and either the applicant or licensee or the licensing agency may appeal from this decision to the Supreme Court as in other cases in the chancery court. Pending final disposition of the matter the status quo of the applicant or licensee shall be preserved, except as the court otherwise orders in the public interest. Rules with respect to court costs as in other cases in chancery shall apply equally to cases under this section.

HISTORY:

Laws, 1981, ch. 484, § 6; Laws, 1986, ch. 437, § 23, eff from and after July 1, 1986.

Cross References —

Effect of appeal on necessity of transcription of testimony, and finality of decision, see § 41-71-9.

RESEARCH REFERENCES

Am. Jur.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (Complaint, petition, or declaration – by license holder – against administrative agency – to enjoin further proceedings to suspend or revoke license – attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

§ 41-71-13. Rules, regulations and standards.

The licensing agency shall adopt, amend, promulgate and enforce rules, regulations and standards, including classifications, with respect to home health agencies licensed, or which may be licensed, to further the accomplishment of the purpose of this chapter in protecting and promoting the health, safety and welfare of the public by insuring adequate care of individuals receiving such services. Such rules, regulations and standards shall be adopted and promulgated by the licensing agency in accordance with the provisions of Section 25-43-1 et seq., and shall be recorded and indexed in a book to be maintained by the licensing agency in its office in the city of Jackson, Mississippi, entitled "Records of Rules, Regulations and Standards." The book shall be open and available to all home health agencies and the public generally at all reasonable times.

HISTORY:

Laws, 1981, ch. 484, § 7, eff from and after July 1, 1981.

Editor's Notes —

Section 25-43-1.101(3) provides that any reference to Section 25-43-1 et seq. shall be deemed to mean and refer to Section 25-43-1.101 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Title 41, Chapter 71, Section 13 of Mississippi Code of 1972 does not authorize Board of Health to require, as prerequisite to new and to continued licensure, that home health agencies provide reasonable amount of indigent care. 1994 Miss. Op. Att'y Gen. 1026.

§ 41-71-15. Compliance by existing agencies.

Any home health agency which is in operation on July 1, 1981, shall be given a reasonable time under the particular circumstances, not to exceed one (1) year from July 1, 1981, within which to comply with the provisions of this chapter and the rules, regulations and standards promulgated in furtherance of this chapter.

HISTORY:
Laws, 1981, ch. 484, § 8, eff from and after July 1, 1981.

§ 41-71-17. Inspections and investigations.

The licensing agency shall make or cause to be made such inspections and investigations as it deems necessary, including visitation of patients at their places of residence.

HISTORY:
Laws, 1981, ch. 484, § 9, eff from and after July 1, 1981.

Cross References —
For another provision regarding obtaining information from home health agencies, see § 41-7-185.

§ 41-71-19. Confidentiality of information.

Information received by the licensing agency through filed reports, inspection, or as otherwise authorized under this chapter, shall not be disclosed publicly in such manner as to identify individuals, except in proceedings involving the question of licensure; however, the licensing agency may utilize statistical data concerning types of services and the utilization of those services for home health-care agencies in performing the statutory duties imposed upon it by Section 41-7-171, et seq. and regulations necessarily promulgated for participation in the medicare or medicaid programs.

HISTORY:
Laws, 1981, ch. 484, § 10; Laws, 1984, ch. 362, § 3, eff from and after July 1, 1984.

§ 41-71-21. Penalty for violations; injunction.

Any person or persons or other entity or entities establishing, managing or operating a home health agency or conducting the business of a home health agency without the required license, or which otherwise violate any of the provisions of this chapter or the rules, regulations or standards promulgated and established in furtherance of this chapter, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than Five Hundred Dollars ($500.00) for each offense. Each day of a continuing violation shall be considered a separate offense. The licensing agency may seek injunctive relief in the event it deems such action necessary after consulting with the state attorney general.

HISTORY:

Laws, 1981, ch. 484, § 11, eff from and after July 1, 1981.

Cross References —

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 73.

HOSPITAL EQUIPMENT AND FACILITIES AUTHORITY ACT

Sec.
41-73-1. Short title.
41-73-3. Legislative findings; declaration of public purpose.
41-73-5. Definitions.
41-73-7. Mississippi Hospital Equipment and Facilities Authority created; membership; appointment; qualifications.
41-73-9. Terms of members of authority; vacancies; removal; oath.
41-73-11. Officers of authority; per diem and expenses of members.
41-73-13. Quorum; vote required for action.
41-73-15. Regular and called meetings.
41-73-17. Executive director; duties; contracting for administrative services; payment; secretary; duties.
41-73-19. Additional officers, agents or employees.
41-73-21. Conflict of interest of member, employee or agent; disclosure required; effect of disclosure.
41-73-23. State office or position not forfeited by virtue of authority membership or service.
41-73-25. Surety bonds of members and executive director; blanket bond authorized; conditions of bonds; costs.
41-73-27. Powers of authority.
41-73-29. Duties of authority.
41-73-31. Additional powers; providing hospital equipment or hospital facilities for use in hospitals in state.
41-73-33. Security requirements with respect to hospital equipment or hospital facilities lease, installment purchase contract, or loan agreement.
41-73-35. Authority may issue bonds; purposes; authorization; issuance.
41-73-37. Bonds; interest; terms and conditions; procedure for issuing; covenants; redemption.
41-73-39. Disposition of proceeds; administrative expenses.
41-73-41. Refunding bonds authorized.
41-73-43. Trust indentures.
41-73-45. Contracts with bond holders; contents.
41-73-47. Community hospitals may contract with authority for financing or refinancing of hospital equipment or facilities; payments as operating expenses; priority; security interests in hospital facilities and equipment; maximum principal amount and time for payment.
41-73-49. Bonds to be general obligation bonds; additional security authorized.
41-73-51. Authority's bonds do not obligate state; neither faith and credit nor taxing power of state or subdivisions pledged.
41-73-53. Pledges.
41-73-55. Repurchase of bonds; cancellation.
41-73-57. Bonds are negotiable instruments, subject to registration provisions of bonds.
41-73-59. Immunity from liability.
41-73-61. Funds and accounts.
41-73-63. Deposits; checks; security for deposits.
41-73-65. Payment of expenses of authority; state and political subdivisions to be held harmless.
41-73-67. Property of authority as public property; tax exemption; assets to go to state upon dissolution of authority.
41-73-69. Bonds of authority as legal investments and as security for public deposits.
41-73-71. Annual report of authority.
41-73-73. State officers and agencies to cooperate with authority.
41-73-75. Chapter cumulative and supplemental as to powers of authority; bonds exempt from other laws governing issuance of bonds.

§ 41-73-1. Short title.

This chapter shall be known and may be cited as the Mississippi Hospital Equipment and Facilities Authority Act.

HISTORY:
Laws, 1983, ch. 493, § 1; Laws, 1986, ch. 392, § 1, eff from and after July 1, 1986.

§ 41-73-3. Legislative findings; declaration of public purpose.

The Legislature hereby finds and declares that:

(1) Delivery of quality health care in Mississippi has in recent years become increasingly dependent upon sophisticated equipment and adequate, modern facilities at a time when the acquisition and financing of such equipment and facilities by health-care providers has become increasingly expensive.

(2) It is necessary that Mississippi hospitals be able to obtain the modern equipment and facilities needed to meet the needs of their medical staffs and to improve the quality of medical care provided to Mississippi citizens.

(3) The increased costs of acquiring and financing modern equipment and facilities by Mississippi hospitals is necessarily passed to the patients receiving medical care from the hospitals, resulting in higher medical bills and increased health insurance premiums.

(4) These increased costs discourage Mississippi citizens from obtaining necessary medical care.

(5) The problems set forth above cannot be remedied solely through the operation of private enterprise or efforts by individual communities, but can be alleviated through the creation of a public body corporate and politic, separate and apart from the State of Mississippi, constituting a governmental instrumentality, to be known as the Mississippi Hospital Equipment and Facilities Authority, to encourage the investment of private capital in Mississippi hospitals through the use of public financing as provided in this act for the purpose of financing hospital equipment and hospital facilities at interest rates lower than those available in the conventional credit markets.

(6) Alleviating the conditions and problems set forth above by the encouragement of private investment through a governmental body is a public purpose and use for which public money provided by the sale of revenue bonds may be borrowed, expended, advanced, loaned and granted and is hereby so declared to be such public purpose as a matter of express legislative determination. Such activities shall not be conducted for profit.

HISTORY:
Laws, 1983, ch. 493, § 2; Laws, 1986, ch. 392, § 2, eff from and after July 1, 1986.

§ 41-73-5. Definitions.

When used in this act, unless the context requires a different definition, the following terms shall have the following meanings:

(a) "Act" means the Mississippi Hospital Equipment and Facilities Authority Act.

(b) "Authority" means the Mississippi Hospital Equipment and Facilities Authority created by this act and any successor to its functions.

(c) "Bonds" means bonds, notes or other evidences of indebtedness of the authority issued pursuant to this act, including refunding bonds.

(d) "Cost" as applied to hospital equipment means any and all costs of such hospital equipment and, without limiting the generality of the foregoing, shall include the following:

(i) All costs of the acquisition, repair, restoration, reconditioning, refinancing or installation of any such hospital equipment and all costs incident or related thereto;

(ii) The cost of any property interest in such hospital equipment including an option to purchase or leasehold interest;

(iii) The cost of architectural, engineering, legal and related services; the cost of the preparation of plans, specifications, studies, surveys and estimates of cost and of revenue; and all other expenses necessary or incident to planning, providing or determining the need for or the feasibility and practicability of such hospital equipment; and the cost of providing or establishing a reasonable reserve fund for the payment of principal and interest on bonds;

(iv) The cost of financing charges, including premiums or prepayment penalties, if any, and interest accrued prior to the acquisition and installation or refinancing of such hospital equipment and after such acquisition and installation or refinancing and start-up costs related to hospital equipment;

(v) Any and all costs paid or incurred in connection with the financing of such hospital equipment, including out-of-pocket expenses, the cost of financing, legal, accounting, financial advisory and consulting fees, expenses and disbursements; the cost of any policy of insurance; the cost of printing, engraving and reproduction services; and the cost of the initial or acceptance fee of any trustee or paying agent;

(vi) All direct or indirect costs of the authority incurred in connection with providing such hospital equipment, including, without limitation, reasonable sums to reimburse the authority for time spent by its agents or employees with respect to providing such hospital equipment and the financing thereof; and

(vii) Any and all costs paid or incurred for the administration of any program for the purchase or lease of or the making of loans for hospital equipment, by the authority and any program for the sale or lease of or the making of loans for such hospital equipment to any participating hospital institution.

(e) "Cost," as applied to hospital facilities, means any and all costs of such hospital facilities and, without limiting the generality of the foregoing, shall include the following:

(i) All costs of the establishment, demolition, site development of new and rehabilitated buildings, rehabilitation, reconstruction repair, erection, building, construction, remodeling, adding to and furnishing of any such hospital facilities and all costs incident or related thereto;

(ii) The cost of acquiring any property interest in such hospital facilities including the purchase thereof, the cost of an option to purchase or the cost of any leasehold interest;

(iii) The cost of architectural, engineering, legal and related services; the cost of the preparation of plans, specifications, studies, surveys and estimates of cost and of revenue; all other expenses necessary or incident to planning, providing or determining the need for or the feasibility and practicability of such hospital facilities or the acquisition thereof; and the cost of providing or establishing a reasonable reserve fund for the payment of principal of and interest on bonds;

(iv) The cost of financing charges, including premiums or prepayment penalties, if any, and interest accrued prior to the acquisition and completion or refinancing of such hospital facilities and after such acquisition and completion or refinancing and start-up costs related to hospital facilities;

(v) Any and all costs paid or incurred in connection with the financing of such hospital facilities, including out-of-pocket expenses, the cost of financing, legal, accounting, financial advisory and consulting fees, expenses and disbursement; the cost of any policy of insurance; the cost of printing, engraving and reproduction services; and the cost of the initial or acceptance fee of any trustee or paying agent;

(vi) All direct or indirect costs of the authority incurred in connection with providing such hospital facilities, including, without limitation, reasonable sums to reimburse the authority for time spent by its agents or employees with respect to providing such hospital facilities and the financing thereof;

(vii) Any and all costs paid or incurred for the administration of any program for the purchase or lease of or the making of loans for hospital facilities, by the authority and any program for the sale or lease of or the making of loans for such hospital facilities to any participating hospital institution; and

(viii) The cost of providing for the payment or the making provision for the payment of, by the appropriate escrowing of moneys or securities, the principal of and interest on which when due will be adequate to make such payment, any indebtedness encumbering the revenues or property of a participating hospital institution, whether such payment is to be effected by redemption of such indebtedness prior to maturity or not.

(f) "Hospital equipment" means any personal property which is found and determined by the authority to be required or necessary or helpful for medical care, research, training or teaching, any one (1) or all, in hospital facilities located in the state, irrespective of whether such property is in existence at the time of, or is to be provided after the making of, such finding. Provided further, that major medical equipment as defined in Section 41-7-173(m), shall require a certificate of need prior to the approval of the authority to contract with said hospital.

(g) "Hospital facility" or "hospital facilities" means buildings and structures of any and all types used or useful, in the discretion of the authority, for providing any types of care to the sick, wounded, infirmed, needy, mentally incompetent or elderly and shall include, without limiting the generality of the foregoing, out-patient clinics, laboratories, laundries, nurses', doctors' or interns' residences, administration buildings, office buildings, facilities for research directly involved with hospital care, maintenance, storage or utility facilities, parking lots, and garages and all necessary, useful, or related furnishings, and appurtenances and all lands necessary or convenient as a site for the foregoing.

(h) "Participating hospital institution" or "hospital institution" means a public or private corporation, association, foundation, trust, cooperative, agency, body politic, or other person or organization which provides or operates or proposes to provide or operate hospital facilities not for profit, and which, pursuant to the provisions of this act, contracts with the authority for the financing or refinancing of the lease or other acquisition of hospital equipment or hospital facilities, or both.

(i) "State" means the State of Mississippi.

The use of singular terms herein shall also include the plural of such term and the use of a plural term herein shall also include the singular of such term unless the context clearly requires a different connotation.

HISTORY:

Laws, 1983, ch. 493, § 3; Laws, 1986, ch. 392, § 3; Laws, 1993, ch. 349, § 1, eff from and after July 1, 1993.

Cross References —

Payment of expenses as are incurred by authority in contracting with state bond advisory division of governor's office for administrative services, see § 41-73-17.

OPINIONS OF THE ATTORNEY GENERAL

There is no authority for a county to convey title to hospital real property to the board of trustees of a community hospital; however, the county may, by resolution properly adopted, join the board of trustees in the execution of a deed of trust or other lien on the real property. 2000 Miss. Op. Att'y Gen. 613.

§ 41-73-7. Mississippi Hospital Equipment and Facilities Authority created; membership; appointment; qualifications.

(1) There is hereby created, with such duties and powers as are set forth in this act, a body politic and corporate, not a state agency, but an independent instrumentality exercising essential public functions, to be known as the Mississippi Hospital Equipment and Facilities Authority.

(2) The authority shall be governed by seven (7) members who shall be appointed by the Governor with the advice and consent of the Senate.

(3) The members shall at all times include the following:

(a) One (1) resident of each of the three (3) Supreme Court districts in the state;

(b) One (1) certified public accountant experienced in hospital finance;

(c) One (1) possessing not less than ten (10) years' experience in hospital management and finance;

(d) One (1) banker with experience in commercial lending or one (1) investment banker with experience in municipal finance;

(e) One (1) chosen at large.

(4) All members shall be residents of the state.

HISTORY:
Laws, 1983, ch. 493, § 4; Laws, 1986, ch. 392, § 4, eff from and after July 1, 1986.

Cross References —
Supreme court districts, see § 9-3-1.

OPINIONS OF THE ATTORNEY GENERAL

State Health Department cannot legally offer for sale or lease licenses which have been issued to home health agencies. 1992 Miss. Op. Att'y Gen. 600.

§ 41-73-9. Terms of members of authority; vacancies; removal; oath.

Three (3) members shall be appointed for an initial term of one (1) year, two (2) members shall be appointed for an initial term of two (2) years, one (1) member shall be appointed for an initial term of three (3) years and one (1) member shall be appointed for an initial term of four (4) years. All subsequent appointments shall be for terms of four (4) years. Each member shall hold office for the term of his appointment and until his successor shall have been appointed and qualified. Vacancies shall be filled by appointment of the governor, subject to the advice and consent of the senate, for the length of the unexpired term only. Any member shall be eligible for reappointment. Any member may be removed from office for incompetency, neglect of duty, or malfeasance in office by the governor after reasonable notice and a public hearing unless the same are expressly waived in writing. Each member of the authority appointed by the governor shall, before entering upon his duty, take an oath of office to administer the duties of his office faithfully and competently, and a record of such oath shall be filed in the office of the secretary of state.

HISTORY:
Laws, 1983, ch. 493, § 5, eff from and after passage (approved April 11, 1983).

§ 41-73-11. Officers of authority; per diem and expenses of members.

The chairman of the authority shall be elected from the members of the authority by the vote of all such members. The members shall also elect from among their number a vice-chairman and such other officers as they may determine. They shall receive no compensation for their services but shall receive reimbursement for actual and necessary expenses and per diem in accordance with Sections 25-3-41 and 25-3-69, respectively.

HISTORY:
Laws, 1983, ch. 493, § 6, eff from and after passage (approved April 11, 1983).

§ 41-73-13. Quorum; vote required for action.

The powers of the authority shall be vested in the members thereof. Four (4) members of the authority shall constitute a quorum for the transaction of business. The affirmative vote of at least four (4) members shall be necessary for any action to be taken by the authority. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all rights and perform all duties of the authority.

HISTORY:
Laws, 1983, ch. 493, § 7, eff from and after passage (approved April 11, 1983).

§ 41-73-15. Regular and called meetings.

Regular meetings of the members of the authority shall be held as set forth in its rules and regulations. Additional meetings of the members of the authority shall be held at the call of the chairman or whenever any three (3) members so request.

HISTORY:
Laws, 1983, ch. 493, § 8, eff from and after passage (approved April 11, 1983).

§ 41-73-17. Executive director; duties; contracting for administrative services; payment; secretary; duties.

The members of the authority may appoint an executive director and/or a secretary who shall be employees of the authority, but not members thereof, and who shall serve at the pleasure of the members and receive such compensation as shall be fixed by the members. The executive director, if appointed, shall attend the meetings of the members of the authority and shall administer, manage and direct the affairs and activities of the authority in accordance with the policies and under the control and direction of the members. The executive director shall approve all accounts for salaries, allowable expenses of the authority or of any employee or consultant thereof, and expenses incidental to the operation of the authority. He shall perform such other duties as may be directed by the members in carrying out the purposes of this chapter. The practices and procedures regarding administrative functions and responsibilities of the authority shall be subject to the approval and review of the director of the state bond advisory division of the governor's office. In lieu of or in addition to the appointment of an executive director, the authority may contract with the state bond advisory division of the governor's office to carry out in whole or in part the administrative functions and responsibilities of the authority, but may only pay the actual expenses incurred by such division in performing such functions and responsibilities. The expenses incurred by the authority in contracting for such administrative functions and responsibilities shall be paid by the authority as a qualified cost pursuant to Section 41-73-5(d)(vii).

The secretary shall attend the meetings of the members of the authority, shall keep a record of the proceedings of the authority, and shall maintain and be custodian of all books, documents and papers filed with the authority, the minute book or journal of the authority, and its official seal. He may cause copies to be made of all minutes and other records and documents of the authority and may give certificates under seal of the authority to the effect that such copies are true copies, and all persons dealing with the authority may rely upon such certificates. If an executive director and/or secretary are not appointed, the members of the authority may designate from among themselves or the authority's employees the person or persons responsible for carrying out the duties set out in this section.

HISTORY:

Laws, 1983, ch. 493, § 9, eff from and after passage (approved April 11, 1983).

Cross References —

State bond advisory division in office of governor, and director thereof, see §§ 7-1-401, 7-1-403.

§ 41-73-19. Additional officers, agents or employees.

The authority may employ legal counsel, technical experts and such other officers, agents and employees, permanent or temporary, as it deems necessary to carry out the efficient operation of the authority, and shall determine their qualifications, duties, compensation and terms of office. The members may delegate to one or more agents or employees of the authority such administrative duties as they deem proper.

HISTORY:

Laws, 1983, ch. 493, § 10, eff from and after passage (approved April 11, 1983).

§ 41-73-21. Conflict of interest of member, employee or agent; disclosure required; effect of disclosure.

Any member, employee or agent of the authority who has, will have, or later acquires an interest, direct or indirect, in any transaction with the authority shall immediately disclose the nature and extent of such interest in writing to the authority as soon as he has knowledge of such actual or prospective interest. Such disclosure shall be entered upon the minutes of the authority. Upon such disclosure such member, employee or agent shall not participate in any action by the authority authorizing such transaction.

HISTORY:
Laws, 1983, ch. 493, § 11, eff from and after passage (approved April 11, 1983).

§ 41-73-23. State office or position not forfeited by virtue of authority membership or service.

Notwithstanding the provisions of any other law, no officer or employee of the state shall be deemed to have forfeited or shall forfeit his office or employment by reason of his acceptance of membership in the authority or by reason of his providing services to such authority.

HISTORY:
Laws, 1983, ch. 493, § 12, eff from and after passage (approved April 11, 1983).

Cross References —
Constitutional prohibitions against holding dual offices, see Miss. Const. Art. 1, § 2 and Art. 14, § 266.

§ 41-73-25. Surety bonds of members and executive director; blanket bond authorized; conditions of bonds; costs.

Before the issuance of any bonds pursuant to this chapter, each member of the authority and the executive director, if one shall have been appointed, shall execute a surety bond in the sum of Fifty Thousand Dollars ($50,000.00) issued by a surety company licensed to do business in the state. To the extent any member of the authority is already covered by a bond required by state law, such member need not obtain another bond so long as the bond required by the state law is in at least the sum specified in this section and covers the member's activities for the authority. In lieu of such bonds, the chairman of the authority may execute a blanket surety bond covering each member and the executive director of the authority. Each surety bond shall be conditioned upon the faithful performance of the duties of the office of the member or executive director and shall be issued by a surety company authorized to transact business in the state as surety. At all times after the issuance of any surety bonds, each member and executive director shall maintain such surety bonds in full force and effect. All costs of the surety bonds shall be borne by the authority.

HISTORY:
Laws, 1983, ch. 493, § 13, eff from and after passage (approved April 11, 1983).

Cross References —
Official bonds of state officers, generally, see §§ 25-1-13 et seq.

§ 41-73-27. Powers of authority.

The authority is hereby granted all powers necessary or appropriate to carry out and effectuate its public and corporate purposes, including but not limited to the following:

(a) To have perpetual succession as a body politic and corporate and an independent instrumentality exercising essential public functions;

(b) To adopt, amend and repeal bylaws, rules and regulations, not inconsistent with this act, to regulate its affairs and to carry into effect the powers and purposes of the authority and conduct its business;

(c) To sue and be sued in its own name;

(d) To have an official seal and alter it at will;

(e) To maintain an office at such place or places within the state as it may designate;

(f) To monitor on a continuing basis the need for hospital equipment financing and hospital facilities financing at interest rates which are consistent with the needs of hospital institutions;

(g) To make and execute contracts and all other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under this act;

(h) To employ architects, engineers, attorneys, inspectors, accountants and health-care experts and financial advisors, and such other advisors, consultants and agents as may be necessary in its judgment, and to fix their compensation;

(i) To procure insurance against any loss in connection with its property and other assets, in such amounts and from such insurers as it may deem advisable, including the power to pay premiums on any such insurance;

(j) To procure insurance or guarantees from any public or private entities, including any department, agency or instrumentality of the United States of America, to secure payment (i) on a loan, lease or purchase payment owed by a participating hospital institution to the authority and (ii) of any bonds issued by the authority, including the power to pay premiums on any such insurance or guarantee;

(k) To procure letters of credit from any national or state banking association or other entity authorized to issue a letter of credit to secure the payment of any bonds issued by the authority or to secure the payment of any loan, lease or purchase payment owed by a participating hospital institution to the authority, including the power to pay the cost of obtaining such letter of credit;

(*l*) To receive and accept from any source aid or contributions of money, property, labor or other things of value to be held, used and applied to carry out the purposes of this act subject to the conditions upon which the grants or contributions are made, including but not limited to gifts or grants from any department, agency or instrumentality of the United States of America for any purpose consistent with the provisions of this act;

(m) To provide, or cause to be provided by a participating hospital institution, by acquisition, lease, fabrication, repair, restoration, reconditioning, refinancing or installation, one or more hospital facilities located within the state or items of hospital equipment to be located within a hospital facility in the state;

(n) To lease as lessor any hospital facility or any item of hospital equipment for such rentals and upon such terms and conditions as the authority may deem advisable and as are not in conflict with the provisions of this act;

(o) To sell for installment payments or otherwise, to option or contract for such sale, and to convey all or any part of any hospital facility or any item of hospital equipment for such price and upon such terms and conditions as the authority may deem advisable and as are not in conflict with the provisions of this act;

(p) To make contracts and incur liabilities, borrow money at such rates of interest as the authority may determine, issue its bonds in accordance with the provisions of this act, and secure any of its bonds or obligations by mortgage or pledge of all or any of its property, franchises and income or as otherwise provided in this act;

(q) To make secured or unsecured loans for the purpose of providing temporary or permanent financing or refinancing for the cost of any hospital facility or item of hospital equipment, including the retiring of any outstanding obligations with respect to such hospital facility or hospital equipment, and the reimbursement for the cost of any hospital facility or hospital equipment, purchased within two (2) years immediately preceding the date of the bond issue, made or given by any participating hospital institution for the cost of any hospital facility, hospital equipment, and to charge and collect interest on such loans for such loan payments and upon such terms and conditions as the authority may deem advisable and as are not in conflict with the provisions of this act;

(r) To invest and reinvest its funds and to take and hold property as security for the investment of such funds as provided in this act;

(s) To purchase, receive, lease (as lessee or lessor), or otherwise acquire, own, hold, improve, use or otherwise deal in and with, hospital facilities and equipment, or any interest therein, wherever situated, as the purposes of the authority shall require;

(t) To sell, convey, mortgage, pledge, assign, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets;

(u) To the extent permitted under its contract with the holders of bonds of the authority, consent to any modification with respect to the rate of interest, time and payment of any installment of principal or interest, or any other term of any contract, loan, loan note, loan note commitment, contract, lease or agreement of any kind to which the authority is a party; and

(v) To assist participating hospital institutions to obtain funds for any purpose by utilizing the value of the receivables of such participating hospital institutions through the making of loans secured by such receivables, by purchasing such receivables, by utilizing such receivables to secure obligations of the authority, or through any combination of the foregoing.

HISTORY:

Laws, 1983, ch. 493, § 14; Laws, 1986, ch. 392, § 5; Laws, 1990, ch. 476, § 1, eff from and after passage (approved March 24, 1990).

Cross References —

Power of authority to enter into agreements with entity securing payment of bonds, authorizing entity to approve participating hospitals that can finance or refinance hospital equipment or hospital facilities with proceeds of bond issue secured, see § 41-73-31.

§ 41-73-29. Duties of authority.

The authority shall have the following duties:

(1) To invest any funds not needed for immediate disbursement, including any funds held in reserve, in one or more of the following:

(a) Obligations of any municipality or the state or the United States of America;

(b) Obligations the principal and interest of which are guaranteed by the state or the United States of America;

(c) Obligations of any corporation wholly owned by the United States of America;

(d) Obligations of any corporation sponsored by the United States of America which are or may become eligible as collateral for advances to member banks as determined by the Board of Governors of the Federal Reserve System;

(e) Certificates or any other evidence of ownership interest in obligations of or obligations unconditionally guaranteed by the United States of America or in specified portions thereof, which may consist of the principal thereof or the interest thereon;

(f) Certificates of deposit or time deposits of qualified depositories of the state as approved by the State Depository Commission, secured in such manner, if any, as the authority shall determine;

(g) Contracts for the purchase and sale of obligations of the type specified in items (a) through (e) above;

(h) Repurchase agreements secured by obligations specified in items (a) through (e) above; or

(i) Money market funds, the assets of which are required to be invested in obligations specified in items (a) through (f) above;

(j) Any investments authorized for the investment of funds of certain hospitals pursuant to Section 27-105-365.

(2) To fix, revise from time to time, charge and collect fees and other charges, as the authority determines to be reasonable, in connection with its loans, leases, sales, advances, insurance, commitments and servicing;

(3) To cooperate with and exchange services, personnel and information with any federal, state or local governmental agency;

(4) To sell, at public or private sale, with or without public bidding, any loan or other obligation held by the authority;

(5) To adopt rules and regulations which enhance the probability that hospital institutions will use for such purposes all bond proceeds which are available to finance hospital equipment and hospital facilities; and

(6) To do any act necessary or convenient to the exercise of the powers granted by this chapter or reasonably implied from it.

HISTORY:

Laws, 1983, ch. 493, § 15; Laws, 1984, ch. 302, § 1; Laws, 1986, ch. 392, § 6; Laws, 2001, ch. 324, § 1, eff from and after passage (approved Mar. 5, 2001).

Editor's Notes —

Section 27-105-1 provides that wherever the term "State Depository Commission" appears in any law, the same shall mean the State Treasurer.

Federal Aspects—
Federal Reserve System generally, see 12 USCS §§ 221 et seq.

§ 41-73-31. Additional powers; providing hospital equipment or hospital facilities for use in hospitals in state.

In addition to the other powers and duties of the authority specified elsewhere in this act, the authority is specifically authorized to initiate a program of providing hospital equipment or hospital facilities located within the state to be operated by participating hospital institutions. In this regard, the authority shall be authorized to exercise the following powers:

(1) To establish eligibility standards for participating hospital institutions;

(2) To enter into an agreement with any entity securing the payment of bonds pursuant to Section 41-73-27(j) or (k), authorizing said entity to approve the participating hospital institutions that can finance or refinance hospital equipment or hospital facilities with proceeds from the bond issue secured by said entity;

(3) To lease to a participating hospital institution specific hospital facilities or items of hospital equipment upon such terms and conditions as the authority may deem proper, to charge and collect rents therefor, to terminate any such lease upon the failure of the lessee to comply with any of its obligations thereunder or otherwise as such lease may provide, to include in any such lease provisions that the lessee shall have the option to renew the term of the lease for such period or periods and at such rents as may be determined by the authority or to purchase any or all of the hospital facilities or hospital equipment to which such lease shall apply;

(4) To loan to a participating hospital institution under an installment purchase contract or loan agreement monies to finance or refinance the cost of specific items of hospital facilities or hospital equipment and to take back a secured or unsecured promissory note evidencing such loan and a mortgage or security interest in the hospital facilities or hospital equipment financed or refinanced with such loan, upon such terms and conditions as the authority may deem proper;

(5) To sell or otherwise dispose of any or all unneeded or obsolete hospital facilities or hospital equipment under terms and conditions as determined by the authority;

(6) To maintain, repair, replace and otherwise improve or cause to be maintained, repaired, replaced and otherwise improved any hospital facilities or hospital equipment owned by the authority;

(7) To obtain or aid in obtaining property insurance on all hospital facilities or hospital equipment owned or financed by the authority and to enter into any agreement, contract or other instrument with respect to any such insurance to accept payment in the event of damage to or destruction of any hospital equipment;

(8) To enter into any agreement, contract or other instrument with respect to any insurance or guarantee or letter of credit, accepting payment

in such manner and form as provided therein in the event of default by a participating hospital institution, and to assign any such insurance or guarantee or letter of credit as security for bonds issued by the authority; and

(9) To purchase and maintain business property insurance and business personal property insurance on all hospital-owned buildings and/or contents as required by federal law and regulations of the Federal Emergency Management Agency (FEMA) as is necessary for receiving public assistance or reimbursement for repair, reconstruction, replacement or other damage to those buildings and/or contents caused by the Hurricane Katrina Disaster of 2005 or subsequent disasters. The authority is authorized to expend funds from any available source for the purpose of obtaining and maintaining that property insurance. The authority is authorized to enter into agreements with the Department of Finance and Administration, local school districts, community/junior college districts, state institutions of higher learning, other community hospitals and/or other state agencies to pool their liabilities to participate in a group business property and/or business personal property insurance program, subject to uniform rules and regulations as may be adopted by the Department of Finance and Administration.

HISTORY:

Laws, 1983, ch. 493, § 16; Laws, 1986, ch. 392, § 7; Laws, 2005, 5th Ex Sess, ch. 24, § 7, eff from and after passage (approved Oct. 24, 2005).

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the second paragraph. The Section "41-73-27(10), (11)" was changed to Section "41-73-27(j) or (k)" following "To enter into an agreement with any entity securing the payment of bonds pursuant to Section." The Joint Committee ratified the correction at its May 31, 2006, meeting.

Cross References —

Security requirements with respect to hospital equipment lease, installment purchase contract or loan agreement, see § 41-73-33.

§ 41-73-33. Security requirements with respect to hospital equipment or hospital facilities lease, installment purchase contract, or loan agreement.

The authority shall require that each participating hospital institution agree to maintain rates sufficient to assure that timely payments are made on any lease, installment purchase contract or loan agreement entered into pursuant to this act and may require any other type of security from the participating hospital institution that it deems reasonable and necessary. In addition, the authority may require that should there be a deficit in the funds necessary to pay any expenses incurred by the authority in connection with the delivery of the bonds, the hospital institutions receiving funds from such bond issue shall provide the necessary funds to make up for such deficit on a pro rata basis as determined by the authority.

HISTORY:

Laws, 1983, ch. 493, § 17; Laws, 1984, ch. 302, § 2; Laws, 1986, ch. 392, § 8, eff from and after July 1, 1986.

§ 41-73-35. Authority may issue bonds; purposes; authorization; issuance.

The authority is hereby authorized to issue, sell and deliver its bonds in accordance with the terms of this act, for any of its corporate purposes.

Bonds shall be authorized by a resolution or resolutions of the authority adopted as provided by this act; provided, that any such resolution authorizing the issuance of bonds may delegate to an officer or officers of the authority the power to issue such bonds from time to time and to fix the details of any such issues of bonds by an appropriate certificate of such authorized officer.

HISTORY:

Laws, 1983, ch. 493, § 18; Laws, 1986, ch. 392, § 9, eff from and after July 1, 1986.

§ 41-73-37. Bonds; interest; terms and conditions; procedure for issuing; covenants; redemption.

(1) The bonds shall be dated, shall bear interest at such rate or rates (which rate or rates may be fixed or variable), shall mature at such time or times in either serial or term form or both not exceeding thirty (30) years from their date, and may be made redeemable prior to maturity at such price or prices and upon such terms and conditions as may be determined by the authority; however, bonds issued to finance equipment shall mature at such time or times not exceeding the average useful life of such equipment. The bonds shall not bear a greater overall maximum interest rate to maturity than that allowed under Section 75-17-103. The bonds, including any interest coupons to be attached thereto, shall be in such form and denomination or denominations and payable at such place or places, either within the state or without the state, and may be executed or authenticated in such manner, as the authority may determine by resolution. In cases where any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of and payment for such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery and payment. The bonds may be issued in coupon book entry or in fully registered form, or any combination, or may be payable to a specific person, as the authority may determine, and provision may be made for the conversion from one form to another. The duty of conversion may be imposed upon a trustee in a trust agreement.

(2) The principal of, redemption premium, if any, and interest on such bonds shall be payable solely from and may be secured by one or more of the following: a pledge of all or any part of the proceeds of bonds, revenues derived from the lease or sale of hospital equipment or hospital facilities or realized from a loan made by the authority to finance or refinance in whole or in part hospital equipment or hospital facilities, revenues derived from operating hospital equipment or hospital facilities, including insurance proceeds or any other revenues provided by a participating hospital institution.

(3) The authority shall sell the bonds at such price or prices as it shall determine, at public or private sale.

(4) The bonds shall be issued under and subject to such terms, conditions and covenants providing for the payment of the principal, redemption premium, if any, and interest and such other terms, conditions, covenants and protective provisions safeguarding such payment, not inconsistent with this act, as may be found to be necessary by the authority for the most advantageous sale thereof, which may include, but not be limited to, covenants with the holders of the bonds, as to:

(a) Pledging or creating a lien on all or any part of any money or property of the authority or of any moneys held in trust or otherwise by others to secure the payment of such bonds or notes;

(b) Otherwise providing for the custody, collection, securing, investment and payment of any money of or due to the authority;

(c) The setting aside of reserves or sinking funds and the regulation or disposition thereof;

(d) Limitations on the purpose to which the proceeds of sale of any issue of such bonds then or thereafter to be issued may be applied;

(e) Limitations on the issuance of additional bonds and on the refunding of outstanding bonds;

(f) The procedure, if any, by which the terms of any contract with the holders of bonds may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;

(g) The creation of special funds into which any money of the authority may be deposited;

(h) Vesting in a trustee or trustees such properties, rights, powers and duties in trust as the authority may determine, which may include any or all of the usual and customary rights, powers and duties of the trustee appointed for the holders of any issue of bonds as agreed upon by the authority;

(i) Defining the acts or omissions to act which shall constitute a default in the obligations and duties of the authority and providing for the rights and remedies of the holders of bonds in the event of such default; provided, that such rights and remedies shall not be inconsistent with the general laws of the state and other provisions of this act; and

(j) Any other matters of like or different character which in any way affect the security and protection of the bonds and the rights of the holders thereof.

HISTORY:

Laws, 1983, ch. 493, § 19; Laws, 1986, ch. 392, § 10, eff from and after July 1, 1986.

§ 41-73-39. Disposition of proceeds; administrative expenses.

The proceeds of the bonds of each issue shall be used for the payment of all or part of the cost of or for the making of a loan in the amount of all or part of the cost of the hospital equipment or the hospital facilities for which such bonds have been authorized or for the refunding of outstanding bonds of the authority and, at the option of the authority, for the deposit into a reserve fund or reserve funds for the bonds; provided that the authority shall be paid an amount of money equal to all of the authority's out-of-pocket expenses and costs in connection with the issuance, sale and delivery of such bonds including, without limitation, all financing, legal (including bond and underwriter's counsel), accounting, financial, advisory, blue sky, printing and other expenses and costs in issuing such bonds, including also initial fees paid to the trustee of the bond issue and to any party servicing the leases, installment purchase contracts and loan agreements for the authority, and the costs of obtaining insurance, guarantees and letters of credit securing payment of the bonds and the lease, loan and installment purchase payments, plus an amount of money equal to the compensation paid to any employee of the authority for the time such employee has spent on activities relating to the issuance, sale and delivery of such bonds, utilizing therefor money from the proceeds of the sale and delivery of bonds issued in accordance with this act. Bond proceeds shall be disbursed in such manner and under such restrictions, if any, as may be determined by the authority.

HISTORY:

Laws, 1983, ch. 493, § 20; Laws, 1986, ch. 392, § 11, eff from and after July 1, 1986.

§ 41-73-41. Refunding bonds authorized.

The authority is authorized to issue its bonds for the purpose of refunding any bonds of the authority then outstanding. The total amount of such refunding bonds shall be an amount sufficient to effect the refunding, and may include an amount sufficient to pay (i) the principal amount of the refunded bonds, (ii) interest accrued or to accrue to the date of maturity or the date of redemption of the bonds to be refunded which need not necessarily be on the first available redemption date, (iii) any redemption premiums to be paid thereon, (iv) any reasonable expenses incurred in connection with such refunding, and (v) any other reasonable costs deemed necessary by the authority to effect the refunding. The proceeds of such refunding bonds may be applied in the manner determined by the authority and may be placed in escrow and invested, without regard to the limitations of any law to the contrary, but not inconsistent with the provisions of this chapter, in the manner and on the terms determined by the authority. All such refunding bonds shall be issued and secured and shall be subject to the provisions of this chapter in the same manner and to the same extent as any other bonds issued pursuant to this chapter.

HISTORY:

Laws, 1983, ch. 493, § 21, eff from and after passage (approved April 11, 1983).

§ 41-73-43. Trust indentures.

The bonds may be secured by a trust indenture by and between the authority and a corporate trustee which may be any bank having the power of a trust company or any trust company within or without the state. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the exercise of its powers and the custody, safekeeping and application of all money. The authority may provide by the trust indenture for the payment of the proceeds of the bonds and the revenue to the trustee under the trust indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as the authority may determine. All expenses incurred in carrying out the trust indenture may be treated as a part of the operating expenses of the authority. If the bonds shall be secured by a trust indenture, the bondholders shall have no authority to appoint a separate trustee to represent them.

HISTORY:

Laws, 1983, ch. 493, § 22, eff from and after passage (approved April 11, 1983).

Cross References —

Bonds of authority not obligating state, see § 41-73-51.

§ 41-73-45. Contracts with bond holders; contents.

Any bond resolution or related trust agreement, trust indenture, indenture of mortgage or deed of trust may contain provisions, which shall be a part of the contract with the holders of the bonds to be authorized, as to: (i) pledging or assigning the revenues generated by the hospital equipment or hospital facilities, or pledging or assigning the notes and mortgage, lease or other security given by the participating hospital institutions with respect to which such bonds are to be issued, or other specified revenues or property of the authority; (ii) the rentals, fees, interest and other amounts to be charged by the authority, the schedule of principal payments and the sums to be raised in each year thereby, and the use, investment and disposition of such sums; (iii) setting aside any reserves or sinking funds, and the regulation, investment and disposition thereof; (iv) limitations on the use of the hospital equipment or hospital facilities; (v) limitations on the purpose to which or the investments in which the proceeds of sale of any issue or bonds then or thereafter to be issued may be applied; (vi) limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured and the terms upon which additional bonds may rank on a parity with, or be subordinate or superior to, other bonds; (vii) the refunding of outstanding bonds; (viii) the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amounts of bonds the holders of which must consent thereto, the manner in which such consent may be given and restrictions on the individual rights of action by bondholders; (ix) acts or omissions which shall constitute a default in the duties of the authority to holders of its bonds and providing the rights and remedies of such holders in the event of default; and (x) any other matters relating to the bonds which the authority deems desirable. In addition to the foregoing, bonds of the authority may be secured by and payable from a pooling of leases or of notes and mortgages or other security instruments whereby the authority may assign its rights, as lessor, and pledge rents under two (2) or more leases of hospital equipment or hospital facilities with two (2) or more participating hospital institutions, as lessees, or assign its rights as payee or secured party and pledge the revenues under two (2) or more notes and loan agreements from two (2) or more participating hospital institutions, upon such terms as may be provided for in bond resolutions or other instruments under which such bonds are issued.

HISTORY:

Laws, 1983, ch. 493, § 23; Laws, 1986, ch. 392, § 12, eff from and after July 1, 1986.

Cross References —

Bonds of authority not obligating state, see § 41-73-51.

§ 41-73-47. Community hospitals may contract with authority for financing or refinancing of hospital equipment or facilities; payments as operating expenses; priority; security interests in hospital facilities and equipment; maximum principal amount and time for payment.

The commissioners or board of trustees of any hospital owned or operated separately or jointly by one or more counties, cities, towns, supervisors districts or election districts, or combination thereof, organized and existing pursuant to Section 41-13-1 et seq., are hereby authorized to enter into a lease, installment purchase contract, sale agreement or loan agreement with the authority and/or with any participating hospital institution, in connection with the financing, refinancing or receiving reimbursement for all or any part of the cost of hospital equipment or hospital facilities, or in order to sell or borrow against receivables, in accordance with the provisions of this chapter, to document any payment obligation or debt thereby acquired by executing one or more notes, bonds or other written evidences of obligation or indebtedness, to secure any such payment obligation or debt by entering into one or more security agreements, indentures or other written pledges of collateral rights or security interests in hospital equipment, hospital facilities or in the revenues of a hospital institution, and to enter into contracts in connection with guarantees and letters of credit issued to secure obligations incurred under such lease, installment purchase contract, sale agreement or loan agreement. Any payments due under such lease, installment purchase contract, sale agreement or loan agreement, and any obligation incurred under such guarantee or letter of credit may be secured by a pledge of the revenues of the participating hospital institution and such pledge, if made, may be on a parity with or subordinate to any present or future indebtedness of the hospital or of the political subdivision or subdivisions which own the participating hospital institution, all as shall be provided in the contract between the authority and the participating hospital. If required to qualify for any program whereby such payments of the participating hospital institution or obligations of the authority backed in whole or in part by such payments will be secured or guaranteed directly or indirectly by the Federal Housing Administration, the Farmers Home Administration or any other agency or instrumentality of the United States Government, the owner or owners of the participating hospital institution may enter into one or more mortgages, deeds of trust or other instruments to grant a security interest in a hospital facility, or any part thereof, or in hospital equipment. No existing indebtedness may be refunded, refinanced or otherwise retired in advance of the due date of such indebtedness pursuant to this section unless such refunding, refinancing or retirement of such indebtedness will result in a net savings to the hospital incurring such indebtedness. Any indebtedness or liability incurred pursuant to this section shall not constitute indebtedness for the purpose of any statutory limitation of indebtedness. Except with regard to refundings or refinancings of existing indebtedness and with regard to obligations subject to unilateral termination by a hospital institution on at least an annual basis, for none of which any such consent shall be required, no payment obligation or debt shall be entered into under authority of this section unless each owner of a hospital institution first has given its written consent to the maximum principal amount of obligation or debt that may be incurred and the maximum time for payment thereof, neither of which maximums may be exceeded.

HISTORY:

Laws, 1983, ch. 493, § 24; Laws, 1984, ch. 302, § 3; Laws, 1986, ch. 392, § 13; Laws, 1990, ch. 476, § 2; Laws, 1993, ch. 349, § 2, eff from and after July 1, 1993.

Editor's Notes —

Sections 41-13-1 through 41-13-9, referred to in this section, were repealed by Laws of 1982, ch. 395, § 6, eff from and after July 1, 1982.

OPINIONS OF THE ATTORNEY GENERAL

A board of trustees of a community hospital may participate in the same bond sale with the board of supervisors that owns the community hospital real property for the purpose of pledging the real property as collateral therefor. 1999 Miss. Op. Att'y Gen. 218.

The authority to execute deeds of trust on community hospital property applies to the county, as well as the board of trustees of the community hospital, as they are authorized to hold real estate "acting jointly or severally." 2000 Miss. Op. Att'y Gen. 613.

§ 41-73-49. Bonds to be general obligation bonds; additional security authorized.

Except as may otherwise be expressly provided by the authority, every issue of its bonds shall be general obligations of the authority payable solely out of any revenue or money of the authority, subject only to any agreements with the holders of particular bonds pledging any particular money or revenue. The bonds may be additionally secured by a pledge of any grant, contribution or guarantee from the federal government or any corporation, association, institution or person or a pledge of any money, income or revenue of the authority from any source.

HISTORY:
Laws, 1983, ch. 493, § 25, eff from and after passage (approved April 11, 1983).

§ 41-73-51. Authority's bonds do not obligate state; neither faith and credit nor taxing power of state or subdivisions pledged.

No bonds issued by the authority under this chapter shall constitute a debt, liability or general obligation of the state, or a pledge of the faith and credit of the state, but shall be payable solely as provided by Sections 41-73-43 and 41-73-45. Each bond issued under this chapter shall contain on the face thereof a statement that neither the faith and credit nor the taxing power of the state or any political subdivision thereof is pledged to the payment of the principal of or the interest on such bond.

HISTORY:
Laws, 1983, ch. 493, § 26, eff from and after passage (approved April 11, 1983).

§ 41-73-53. Pledges.

Any pledge made by the authority shall be valid and binding from the time when the pledge is made. The revenue, money or properties so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

HISTORY:
Laws, 1983, ch. 493, § 27, eff from and after passage (approved April 11, 1983).

§ 41-73-55. Repurchase of bonds; cancellation.

The authority, subject to such agreements with bondholders as may then exist, shall have the power to purchase bonds of the authority out of any funds available therefor, which shall thereupon be cancelled at any reasonable price which, if the bonds are then redeemable, shall not exceed the redemption price then applicable plus accrued interest to the next interest payment date thereon.

HISTORY:
Laws, 1983, ch. 493, § 28, eff from and after passage (approved April 11, 1983).

§ 41-73-57. Bonds are negotiable instruments, subject to registration provisions of bonds.

Whether or not the bonds are in the form and character of negotiable instruments, such bonds are hereby made negotiable instruments, subject only to provisions of the bonds relating to registration.

HISTORY:
Laws, 1983, ch. 493, § 29, eff from and after passage (approved April 11, 1983).

§ 41-73-59. Immunity from liability.

Neither the members of the authority nor any other person executing the bonds issued under this chapter shall be subject to personal liability or accountability by reason of the issuance thereof.

HISTORY:
Laws, 1983, ch. 493, § 30, eff from and after passage (approved April 11, 1983).

§ 41-73-61. Funds and accounts.

The authority may create and establish such funds and accounts as may be necessary or desirable for its purposes.

HISTORY:
Laws, 1983, ch. 493, § 31, eff from and after passage (approved April 11, 1983).

§ 41-73-63. Deposits; checks; security for deposits.

All moneys of the authority, except as otherwise authorized or provided in this chapter, shall be deposited as soon as practical in a separate account or accounts in banks or trust companies organized under the laws of this state or in national banking associations. The money in such accounts shall be paid by checks signed by the executive director or other officers, employees or agents of the authority as the authority shall authorize. All deposits of money shall, if required by the authority, be secured in such a manner as the authority determines to be prudent, and all banks or trust companies are authorized to give security for the deposits.

HISTORY:
Laws, 1983, ch. 493, § 32, eff from and after passage (approved April 11, 1983).

§ 41-73-65. Payment of expenses of authority; state and political subdivisions to be held harmless.

All expenses incurred by the authority in carrying out the provisions of this chapter shall be payable solely from funds provided under this chapter, and nothing in this chapter shall be construed to authorize the authority to incur indebtedness or liability on behalf of or payable by the state or any political subdivision.

HISTORY:
Laws, 1983, ch. 493, § 33, eff from and after passage (approved April 11, 1983).

§ 41-73-67. Property of authority as public property; tax exemption; assets to go to state upon dissolution of authority.

All property acquired or held by the authority under this act is declared to be public property used for public and governmental purposes, and all property, income therefrom and bonds issued under this act, interest payable thereon and income derived therefrom, shall at all times be exempt from all taxes imposed by the state, any county, any municipality or any other political subdivision of the state. Upon dissolution of the authority, all assets thereof, after payment of all its indebtedness, shall inure to the benefit of the state.

HISTORY:
Laws, 1983, ch. 493, § 34; Laws, 1986, ch. 392, § 14, eff from and after July 1, 1986.

§ 41-73-69. Bonds of authority as legal investments and as security for public deposits.

The state and all public officers, municipal corporations, political subdivisions and public bodies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business and all executors, administrators, guardians, trustees and other fiduciaries and the Mississippi Public Employees' Retirement System may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds issued by the authority, and such bonds shall be authorized security for all public deposits; it being the purpose of this section to authorize any persons, firms, corporations, associations, political subdivisions, bodies and officers, public or private, to use any funds owned or controlled by them, including, but not limited to, sinking, insurance, investment, retirement, compensation, pension and trust funds, and funds held on deposit, for the purchase of any such bonds, and that any such bonds shall be authorized security for all public deposits. However, nothing contained in this chapter with regard to legal investments shall be construed as relieving any person, firm or corporation from any duty of exercising reasonable care in selecting securities.

HISTORY:
Laws, 1983, ch. 493, § 35, eff from and after passage (approved April 11, 1983).

§ 41-73-71. Annual report of authority.

The authority shall, following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor and both houses of the Legislature and, within thirty (30) days of the receipt thereof by the authority, a copy of the report of every external examination of the books and accounts of the authority. Each member of the Legislature shall receive a copy of any such reports by making a request for it to the chairman of the authority.

HISTORY:
Laws, 1983, ch. 493, § 36; Laws, 2009, ch. 546, § 13, eff from and after passage (approved Apr. 15, 2009).

§ 41-73-73. State officers and agencies to cooperate with authority.

All state officers and all state agencies may render such services to the authority within their respective functions as may be requested by the authority.

HISTORY:
Laws, 1983, ch. 493, § 37, eff from and after passage (approved April 11, 1983).

§ 41-73-75. Chapter cumulative and supplemental as to powers of authority; bonds exempt from other laws governing issuance of bonds.

Neither Sections 41-73-1 through 41-73-73 nor anything contained in Sections 41-73-1 through 41-73-73 is or shall be construed as a restriction or limitation upon any powers which the authority might otherwise have under any other law of the state, and Sections 41-73-1 through 41-73-73 are cumulative to such powers. Sections 41-73-1 through 41-73-73 do and shall be construed to provide a complete, additional and alternative method for the doing of the things authorized and shall be regarded as supplemental and additional to powers conferred by any other laws. The issuance of bonds under the provisions of Sections 41-73-1 through 41-73-73 need not comply with the requirements of any other state laws applicable to the issuance of bonds, notes and other obligations. Any issuance of bonds hereunder may be validated in the manner set forth in Sections 31-13-1 et seq. No proceedings, notice or approval shall be required for the issuance of any bonds or any instrument or the security therefor, except as provided in Sections 41-73-1 through 41-73-73.

HISTORY:
Laws, 1983, ch. 493, § 38; Laws, 1993, ch. 349, § 3, eff from and after July 1, 1993.

CHAPTER 75.

AMBULATORY SURGICAL FACILITIES

Sec.
41-75-1. Definitions.
41-75-3. Purpose of chapter.
41-75-5. License required.
41-75-7. Application for license; fee [Repealed effective July 1, 2020].
41-75-9. Issuance of license; renewal and fee; transferability; posting [Repealed effective July 1, 2020].
41-75-11. Denial, suspension or revocation of license; grounds; procedure.
41-75-13. Promulgation of rules, regulations and standards.
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41-75-16. Time limitation for abortion facility to comply with rules, regulations, or minimum standards.
41-75-17. Investigations and inspections.
41-75-18. Reports by abortion facility.
41-75-19. Confidentiality of certain information.
41-75-21. Annual reports.
41-75-23. Appeal from denial, suspension or revocation of license; procedure.
41-75-25. Penalty for violation of chapter.
41-75-26. Abortion facility operating without license; penalty; injunctions.
41-75-29. Transporting patient of abortion facility to hospital; ambulance services.

§ 41-75-1. Definitions.

For the purpose of this chapter:

(a) “Ambulatory surgical facility” means a publicly or privately owned institution that is primarily organized, constructed, renovated or otherwise established for the purpose of providing elective surgical treatment of “outpatients” whose recovery, under normal and routine circumstances, will not require “inpatient” care. The facility defined in this paragraph does not include the offices of private physicians or dentists, whether practicing individually or in groups, but does include organizations or facilities primarily engaged in that outpatient surgery, whether using the name “ambulatory surgical facility” or a similar or different name. That organization or facility, if in any manner considered to be operated or owned by a hospital or a hospital holding, leasing or management company, either for profit or not for profit, is required to comply with all licensing agency ambulatory surgical licensure standards governing a “hospital affiliated” facility as adopted under Section 41-9-1 et seq., provided that the organization or facility does not intend to seek federal certification as an ambulatory surgical facility as provided for at 42 CFR, Parts 405 and 416. If the organization or facility is to be operated or owned by a hospital or a hospital holding, leasing or management company and intends to seek federal certification as an ambulatory facility, then the facility is considered to be “freestanding” and must comply with all licensing agency ambulatory surgical licensure standards governing a “freestanding” facility.

If the organization or facility is to be owned or operated by an entity or person other than a hospital or hospital holding, leasing or management company, then the organization or facility must comply with all licensing agency ambulatory surgical facility standards governing a "freestanding" facility.

(b) "Hospital affiliated" ambulatory surgical facility means a separate and distinct organized unit of a hospital or a building owned, leased, rented or utilized by a hospital and located in the same county in which the hospital is located, for the primary purpose of performing ambulatory surgery procedures. The facility is not required to be separately licensed under this chapter and may operate under the hospital's license in compliance with all applicable requirements of Section 41-9-1 et seq.

(c) "Freestanding" ambulatory surgical facility means a separate and distinct facility or a separate and distinct organized unit of a hospital owned, leased, rented or utilized by a hospital or other persons for the primary purpose of performing ambulatory surgery procedures. The facility must be separately licensed as defined in this section and must comply with all licensing standards promulgated by the licensing agency under this chapter regarding a "freestanding" ambulatory surgical facility. Further, the facility must be a separate, identifiable entity and must be physically, administratively and financially independent and distinct from other operations of any other health facility, and shall maintain a separate organized medical and administrative staff. Furthermore, once licensed as a "freestanding" ambulatory surgical facility, the facility shall not become a component of any other health facility without securing a certificate of need to do that.

(d) "Ambulatory surgery" means surgical procedures that are more complex than office procedures performed under local anesthesia, but less complex than major procedures requiring prolonged postoperative monitoring and hospital care to ensure safe recovery and desirable results. General anesthesia is used in most cases. The patient must arrive at the facility and expect to be discharged on the same day. Ambulatory surgery shall only be performed by physicians or dentists licensed to practice in the State of Mississippi.

(e) "Abortion" means the use or prescription of any instrument, medicine, drug or any other substances or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth or to remove a dead fetus. Abortion procedures after the first trimester shall only be performed at a Level I abortion facility or an ambulatory surgical facility or hospital licensed to perform that service.

(f) "Abortion facility" means a facility operating substantially for the purpose of performing abortions and is a separate identifiable legal entity from any other health care facility. Abortions shall only be performed by physicians licensed to practice in the State of Mississippi. All physicians associated with the abortion facility must have admitting privileges at a local hospital and staff privileges to replace local hospital on-staff physicians. All physicians associated with an abortion facility must be board certified or eligible in obstetrics and gynecology, and a staff member trained in CPR shall always be present at the abortion facility when it is open. The term "abortion facility" includes physicians' offices that are used substantially for the purpose of performing abortions. An abortion facility operates substantially for the purpose of performing abortions if any of the following conditions are met:

(i) The abortion facility is a provider for performing ten (10) or more abortion procedures per calendar month during any month of a calendar year, or one hundred (100) or more in a calendar year.

(ii) The abortion facility, if operating less than twenty (20) days per calendar month, is a provider for performing ten (10) or more abortion procedures, or performing a number of abortion procedures that would be equivalent to ten (10) procedures per month, if the facility were operating twenty (20) or more days per calendar month, in any month of a calendar year.

(iii) The abortion facility holds itself out to the public as an abortion provider by advertising by any public means, such as newspaper, telephone directory, magazine or electronic media, that it performs abortions.

(iv) The facility applies to the licensing agency for licensure as an abortion facility.

(g) "Licensing agency" means the State Department of Health.

(h) "Operating" an abortion facility means that the facility is open for any period of time during a day and has on site at the facility or on call a physician licensed to practice in the State of Mississippi available to provide abortions.

An abortion facility may apply to be licensed as a Level I facility or a Level II facility by the licensing agency. Level II abortion facilities shall be required to meet minimum standards for abortion facilities as established by the licensing agency. Level I abortion facilities shall be required to meet minimum standards for abortion facilities and minimum standards for ambulatory surgical facilities as established by the licensing agency.

Any abortion facility that begins operation after June 30, 1996, shall not be located within one thousand five hundred (1,500) feet from the property on which any church, school or kindergarten is located. An abortion facility shall not be in violation of this paragraph if it is in compliance with this paragraph on the date it begins operation and the property on which a church, school or kindergarten is located within one thousand five hundred (1,500) feet from the facility.

(i) "Freestanding emergency room" is a facility open twenty-four (24) hours a day for the treatment of urgent and emergent medical conditions which is not located on a hospital campus. In order to be eligible for licensure under this chapter, the freestanding emergency room shall be located at least fifteen (15) miles from the nearest hospital-based emergency room in any rural community where the federal CMMS had previously designated a rural hospital as a critical access hospital and that designation has been revoked.

(j) "Post-acute residential brain injury rehabilitation facility" is a facility containing no more than twelve (12) beds providing medically directed long-term but nonacute rehabilitation to patients who have acquired brain injury. In order to be eligible for licensure under this chapter, the post-acute residential brain injury rehabilitation facility shall be located at least twenty-five (25) miles from the nearest acute care rehabilitation hospital and at least five (5) miles from the boundaries of any municipality having a population of ten thousand (10,000) or more, according to the most recent federal decennial census, at the time that facility is established.

HISTORY:

Laws, 1983, ch. 433, § 1; Laws, 1984, ch. 430; Laws, 1986, ch. 437, § 24; Laws, 1991, ch. 301, § 1; Laws, 1996, ch. 442, § 3; Laws, 2004, ch. 584, § 1; Laws, 2005, ch. 478, § 1; Laws, 2006, ch. 506, § 1; Laws, 2012, ch. 331, § 1; Laws, 2016, ch. 309, § 1; Laws, 2017, ch. 327, § 1, eff from and after July 1, 2017.

Editor's Notes —

Laws of 1991, ch. 301, § 9, provides as follows:

"SECTION 9. The provisions of this act shall not be construed to repeal or modify any provision of Mississippi law not expressly altered by this act, and furthermore does not establish a state policy that condones abortion."

Amendment Notes —

The 2017 amendment added (j).

Cross References —

Certificates of need, see §§ 41-7-173 et seq.

Abolition of health care commission, see §§ 41-7-175 et seq.

JUDICIAL DECISIONS

1. Constitutionality.

Abortion clinic operator demonstrated a substantial likelihood of success on its claim that House Bill 1390's (Chapter 331, Laws of 2012) admission-privileges requirement imposed an undue burden on a woman's right to choose an abortion in Mississippi, and was therefore unconstitutional as applied to plaintiffs in this case. Jackson Women's Health Org. v. Currier, 760 F.3d 448, 2014 U.S. App. LEXIS 14591 (5th Cir. Miss. 2014), cert. denied, — U.S. —, 136 S. Ct. 2536, 195 L. Ed. 2d 867, 2016 U.S. LEXIS 4292 (U.S. 2016).

Amendment to Miss. Code Ann. § 41-75-1 (2004), requiring licensure as an ambulatory surgery facility for second trimester abortions, effectively made abortions after first trimester unavailable to women in Mississippi; it was a substantial obstacle to a woman's choice and would likely not survive Fourteenth Amendment scrutiny, thus, a preliminary injunction issued. Jackson Womens Health Org., Inc. v. Amy, 330 F. Supp. 2d 820, 2004 U.S. Dist. LEXIS 16057 (S.D. Miss. 2004).

RESEARCH REFERENCES

Practice References.

AHLA Ambulatory Surgery Centers; Legal and Regulatory Issues (AHLA).

§ 41-75-3. Purpose of chapter.

The purpose of this chapter is to protect and promote the public welfare by providing for the development, establishment and enforcement of certain standards in the maintenance and operation of ambulatory surgical facilities and abortion facilities and freestanding emergency rooms and post-acute residential brain injury rehabilitation facilities, which will ensure safe, sanitary, and reasonably adequate care of individuals in such facilities.

HISTORY:

Laws, 1983, ch. 433, § 2; Laws, 1991, ch. 301, § 2; Laws, 2016, ch. 309, § 2; Laws, 2017, ch. 327, § 2, eff from and after July 1, 2017.

Editor's Notes —

Laws of 1991, ch. 301, § 9, provides as follows:

"SECTION 9. The provisions of this act shall not be construed to repeal or modify any provision of Mississippi law not expressly altered by this act, and furthermore does not establish a state policy that condones abortion."

Amendment Notes —

The 2017 amendment inserted "and post-acute residential brain injury rehabilitation facilities."

§ 41-75-5. License required.

No person as defined in Section 41-7-173, acting severally or jointly with any other person, shall establish, conduct, operate or maintain an ambulatory surgical facility or an abortion facility or a freestanding emergency room or a post-acute residential brain injury rehabilitation facility in this state without a license under this chapter.

In order to receive a license for a post-acute residential brain injury rehabilitation facility under this chapter, the recipient of the license must agree in writing that the facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the facility who are participating in the Medicaid program. This written agreement by the recipient of the license shall be fully binding on any later owner of the facility, if the ownership of the facility is transferred at any time after the issuance of the license. Agreement that the facility will not participate in the Medicaid program shall be a condition of the issuance of a license for a post-acute residential brain injury rehabilitation facility to any person under this chapter, and if such facility at any time after the issuance of the license, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the licensing agency shall revoke the license of the facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the license was issued, as provided in this section and in the written agreement by the recipient of the license.

HISTORY:

Laws, 1983, ch. 433, § 3; Laws, 1991, ch. 301, § 3; Laws, 2016, ch. 309, § 3; Laws, 2017, ch. 327, § 3, eff from and after July 1, 2017.

Editor's Notes —

Laws of 1991, ch. 301, § 9, provides as follows:

"SECTION 9. The provisions of this act shall not be construed to repeal or modify any provision of Mississippi law not expressly altered by this act, and furthermore does not establish a state policy that condones abortion."

Amendment Notes —

The 2017 amendment in the first paragraph, deleted "of the Mississippi Code of 172" following "Section 41-7-173" and inserted "or a post-acute residential brain injury rehabilitation facility"; and added the second paragraph.

§ 41-75-7. Application for license; fee [Repealed effective July 1, 2020].

An application for a license shall be made to the licensing agency upon forms provided by it and shall contain such information as the licensing agency reasonably requires, which may include affirmative evidence of ability to comply with such reasonable standards, rules and regulations as are lawfully prescribed hereunder. Each application for a license shall be accompanied by a license fee of Three Thousand Dollars ($3,000.00), which shall be paid to the licensing agency. Any increase in the fee charged by the licensing agency under this section shall be in accordance with the provisions of Section 41-3-65.

HISTORY:
Laws, 1983, ch. 433, § 4; Laws, 1986, ch. 500, § 26; Laws, 1998, ch. 433, § 4; Laws, 2016, ch. 510, § 22, eff from and after July 1, 2016.

Editor's Notes —
Laws of 2016, ch. 510, § 65 provides:
"SECTION 65. This act shall stand repealed on July 1, 2020."

§ 41-75-9. Issuance of license; renewal and fee; transferability; posting [Repealed effective July 1, 2020].

Upon receipt of an application for license and the license fee, the licensing agency shall issue a license if the applicant and the institutional facilities meet the requirements established under this chapter and the requirements of Section 41-7-173 et seq. where determined by the licensing agency to be applicable. A license, unless suspended or revoked, shall be renewable annually upon payment of a renewal fee of Three Thousand Dollars ($3,000.00), which shall be paid to the licensing agency, and upon filing by the licensee and approval by the licensing agency of an annual report upon such uniform dates and containing such information in such form as the licensing agency requires. Any increase in the fee charged by the licensing agency under this section shall be in accordance with the provisions of Section 41-3-65. Each license shall be issued only for the premises and person or persons named in the application and shall not be transferable or assignable. Licenses shall be posted in a conspicuous place on the licensed premises.

HISTORY:
Laws, 1983, ch. 433 § 5; Laws, 1986, ch. 500, § 27; Laws, 1998, ch. 433, § 5; Laws, 2016, ch. 510, § 23, eff from and after July 1, 2016.

Editor's Notes —
Laws of 2016, ch. 510, § 65 provides:
"SECTION 65. This act shall stand repealed on July 1, 2020."

§ 41-75-11. Denial, suspension or revocation of license; grounds; procedure.

The licensing agency after notice and opportunity for a hearing to the applicant or licensee is authorized to deny, suspend or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established under this chapter. Such notice shall be effected by registered mail, or by personal service setting forth the particular reasons for the proposed action and fixing a date not less than thirty (30) days from the date of such mailing or such service, at which time the applicant or licensee shall be given an opportunity for a prompt and fair hearing. On the basis of any such hearing, or upon default of the applicant or licensee, the licensing agency shall make a determination specifying its findings of fact and conclusions of law. A copy of such determination shall be sent by registered mail or served personally upon the applicant or licensee. The decision revoking, suspending or denying the license or application shall become final thirty (30) days after it is so mailed or served, unless the applicant or licensee, within such thirty (30) day period, appeals the decision to the chancery court in the county in which such facility is located in the manner prescribed in Section 43-11-23, Mississippi Code of 1972. The procedure governing hearings authorized by this section shall be in accordance with rules promulgated by the licensing agency. A full and complete record shall be kept of all proceedings, and all testimony shall be recorded but need not be transcribed unless the decision is appealed pursuant to Section 43-11-23, Mississippi Code of 1972. Witnesses may be subpoenaed by either party. Compensation shall be allowed to witnesses as in cases in the chancery court. Each party shall pay the expense of his own witnesses. The cost of the record shall be paid by the licensing agency provided any other party desiring a copy of the transcript shall pay therefor the reasonable cost of preparing the same.

HISTORY:

Laws, 1983, ch. 433, § 6, eff from and after July 1, 1983.

Cross References —

Compensation of witnesses in chancery court, see § 25-7-47.

§ 41-75-13. Promulgation of rules, regulations and standards.

The licensing agency shall adopt, amend, promulgate and enforce rules, regulations and standards, including classifications, with respect to ambulatory surgical facilities and abortion facilities, freestanding emergency rooms and post-acute residential brain injury rehabilitation facilities licensed, or which may be licensed, to further the accomplishment of the purpose of this chapter in protecting and promoting the health, safety and welfare of the public by ensuring adequate care of individuals receiving services from such facilities. The licensing agency also shall adopt, amend, promulgate and enforce rules, regulations and standards with respect to the enforcement of the informed consent requirements of Sections 41-41-31 through 41-41-39 at abortion facilities. Such rules, regulations and standards for freestanding emergency rooms shall include a patient transfer policy under which the freestanding emergency room enters into an agreement with a general hospital for a protocol for patient transfers. Such rules, regulations and standards shall be adopted and promulgated by the licensing agency in accordance with the provisions of Section 25-43-1 et seq., and shall be recorded and indexed in a book to be maintained by the licensing agency in its main office in the State of Mississippi, entitled “Rules and Regulations for Operation of Ambulatory Surgical Facilities and Abortion Facilities, Freestanding Emergency Room Facilities and Post-Acute Residential Brain Injury Rehabilitation Facilities.” The book shall be open and available to all ambulatory surgical facilities and abortion facilities, freestanding emergency rooms and post-acute residential brain injury rehabilitation facilities and the public during regular business hours.

HISTORY:

Laws, 1983, ch. 433, § 7; Laws, 1986, ch. 437, § 25; Laws, 1991, ch. 301, § 4; Laws, 1996, ch. 442, § 4; Laws, 2016, ch. 309, § 4; Laws, 2017, ch. 327, § 4, eff from and after July 1, 2017.

Editor’s Notes —

Section 25-43-1.101(3) provides that any reference to Section 25-43-1 et seq. shall be deemed to mean and refer to Section 25-43-1.101 et seq.

Laws of 1991, ch. 301, § 9, provides as follows:

"SECTION 9. The provisions of this act shall not be construed to repeal or modify any provision of Mississippi law not expressly altered by this act, and furthermore does not establish a state policy that condones abortion."

Amendment Notes —

The 2017 amendment added references to "post-acute residential brain injury rehabilitation facilities" everywhere they appear, and made related stylistic changes.

Cross References —

Requirement for public access to public records, see §§ 25-61-1 et seq.

RESEARCH REFERENCES

Am. Jur.

1 Am. Jur. Pl & Pr Forms (Rev), Abortion, Form 3.1 (Complaint, petition, or declaration – gynecologist's prescription of drug to pregnant woman – forcing pregnant woman to choice of submitting to abortion or of risking birth of congenitally defective child).

§ 41-75-15. Conformity with rules, regulations or standards promulgated subsequent to start of operations.

Any ambulatory surgical facility which is in operation at the time of promulgation of any applicable rules or regulations or minimum standards under this chapter shall be given a reasonable time, under the particular circumstances not to exceed one (1) year from the date such are duly adopted, within which to comply with such rules and regulations and minimum standards.

HISTORY:

Laws, 1983, ch. 433, § 8, eff from and after July 1, 1983.

Cross References —

Promulgation of rules, regulations and standards, see § 41-75-13.

§ 41-75-16. Time limitation for abortion facility to comply with rules, regulations, or minimum standards.

Any abortion facility which is in operation at the time of promulgation of any applicable rules or regulations or minimum standards under this chapter shall be given a reasonable time, under the particular circumstances not to exceed six (6) months from the date such are duly adopted, within which to comply with such rules and regulations and minimum standards.

HISTORY:

Laws, 1991, ch. 301, § 5, eff from and after July 1, 1990 (Governor's veto overridden by Legislature on January 17, 1991).

Editor's Notes —

Laws of 1991, ch. 301, § 9, provides as follows:

"SECTION 9. The provisions of this act shall not be construed to repeal or modify any provision of Mississippi law not expressly altered by this act, and furthermore does not establish a state policy that condones abortion."

§ 41-75-17. Investigations and inspections.

The licensing agency shall make or cause to be made such inspections and investigations as it deems necessary.

HISTORY:
Laws, 1983, ch. 433, § 9, eff from and after July 1, 1983.

§ 41-75-18. Reports by abortion facility.

Each abortion facility shall report monthly to the State Department of Health such information as may be required by the department in its rules and regulations for each abortion performed by such facility.

HISTORY:
Laws, 1991, ch. 301, § 6, eff from and after July 1, 1990 (Governor's veto overridden by Legislature on January 17, 1991).

Editor's Notes —
Laws of 1991, ch. 301, § 9, provides as follows:

"SECTION 9. The provisions of this act shall not be construed to repeal or modify any provision of Mississippi law not expressly altered by this act, and furthermore does not establish a state policy that condones abortion."

§ 41-75-19. Confidentiality of certain information.

Information received by the licensing agency through filed reports, inspection, or as otherwise authorized under this chapter, shall not be disclosed publicly in such manner as to identify individuals, except in a proceeding involving the questions of licensure.

HISTORY:
Laws, 1983, ch. 433, § 10, eff from and after July 1, 1983.

Cross References —
Limitation of public access to public records protected by law, see § 25-61-11.

§ 41-75-21. Annual reports.

The licensing agency shall prepare and publish an annual report of its activities and operations under this chapter. Copies of such publications shall be available in the office of the licensing agency and in the office of the Secretary of State, in compliance with Sections 25-43-7 and 25-43-11, Mississippi Code of 1972. A reasonable number of such publication(s) shall be available in the office of the licensing agency to be furnished to persons requesting, for a nominal fee.

HISTORY:
Laws, 1983, ch. 433, § 11; Laws, 1986, ch. 437, § 26, eff from and after July 1, 1986.

Editor's Notes —
Sections 25-43-7 and 25-43-11, referred to in this section, were part of the former Administrative Procedures Law. Chapter 304, Laws of 2003, effective from and after July 1, 2005, repealed the former Administrative Procedures Law and enacted a new version of the Administrative Procedures Act, which is codified as §§ 25-43-1.101 et seq.

Cross References —
Public access to public records generally, see §§ 25-61-1 et seq.

§ 41-75-23. Appeal from denial, suspension or revocation of license; procedure.

Any applicant or licensee aggrieved by the decision of the licensing agency after a hearing, may within thirty (30) days after the mailing or serving of notice of the decision as provided in Section 43-11-11, Mississippi Code of 1972, file a notice of appeal to the chancery court of the First Judicial District of Hinds County or in the chancery court of the county in which the institution is located or proposed to be located. Such appeal shall state briefly the nature of the proceedings before the licensing agency and shall specify the order complained of. Any person or entity whose rights may be materially affected by the action of the licensing agency may appear and become a party, or the court may, upon motion, order that any such person or entity be joined as a necessary party. Upon filing of the appeal, the clerk of the chancery court shall serve notice on the licensing agency, whereupon the licensing agency shall, within sixty (60) days or such additional time as the court may allow from the service of such notice, certify with the court a copy of the record and decision, including the transcript of the hearings on which the decision is based. No new or additional evidence shall be introduced in court; the case shall be determined upon the record certified to the court. The court may sustain or dismiss the appeal, modify or vacate the order complained of in whole or in part, as the case may be; but in case the order is wholly or partly vacated, the court may also, in its discretion, remand the matter to the licensing agency for such further proceedings, not inconsistent with the court's order, as, in the opinion of the court, justice may require. The order may not be vacated or set aside, either in whole or in part, except for errors of law, unless the court finds that the order of the licensing agency is not supported by substantial evidence, is contrary to the manifest weight of the evidence, is in excess of the statutory authority or jurisdiction of the licensing agency or violates any vested constitutional rights of any party involved in the appeal. Pending final disposition of the matter, the status quo of the applicant or licensee shall be preserved, except as the court otherwise orders in the public interest. Rules with respect to court costs in other cases in chancery shall apply equally to cases hereunder. Appeals in accordance with law may be had to the Supreme Court of the State of Mississippi from any final judgment of the chancery court.

HISTORY:

Laws, 1983, ch. 433, § 12; Laws, 1986, ch. 437, § 27, eff from and after July 1, 1986.

§ 41-75-25. Penalty for violation of chapter.

Any person or persons or other entity or entities establishing, managing or operating an ambulatory surgical facility or conducting the business of an ambulatory surgical facility without the required license, or which otherwise violate any of the provisions of this chapter of the "Mississippi Health Care Commission Law of 1979," as amended, or the rules, regulations or standards promulgated in furtherance of any law in which the commission has authority therefor shall be subject to the penalties and sanctions of Section 41-7-209, Mississippi Code of 1972.

HISTORY:

Laws, 1983, ch. 433, § 13, eff from and after July 1, 1983.

Editor's Notes —

The "Mississippi Health Care Commission Law of 1979", referred to in this section 15, Laws of 1979, ch. 451, which appears as §§ 41-7-171 et seq.

§ 41-75-26. Abortion facility operating without license; penalty; injunctions.

(1) Any person or persons or other entity or entities establishing, managing or operating an abortion facility or conducting the business of an abortion facility without the required license, or which otherwise violate any provision of this chapter regarding abortion facilities or the rules, regulations and standards promulgated in furtherance thereof shall be subject to revocation of the license of the abortion facility or nonlicensure of the abortion facility. In addition, any violation of any provision of this chapter regarding abortion facilities or of the rules, regulations and standards promulgated in furtherance thereof by intent, fraud, deceit, unlawful design, willful and/or deliberate misrepresentation, or by careless, negligent or incautious disregard for such statutes or rules, regulations and standards, either by persons acting individually or in concert with others, shall constitute a misdemeanor and shall be punishable by a fine not to exceed One Thousand Dollars ($1,000.00) for each such offense. Each day of continuing violation shall be considered a separate offense. The venue for prosecution of any such violation shall be in any county of the state wherein any such violation, or portion thereof, occurred.

(2) The Attorney General, upon certification by the executive director of the licensing agency, shall seek injunctive relief in a court of proper jurisdiction to prevent violations of the provisions of this chapter regarding abortion facilities or the rules, regulations and standards promulgated in furtherance thereof in cases where other administrative penalties and legal sanctions imposed have failed to prevent or cause a discontinuance of any such violation.

HISTORY:

Laws, 1991, ch. 301, § 7, eff from and after July 1, 1990 (Governor's veto overridden by Legislature on January 17, 1991).

Editor's Notes —

Laws of 1991, ch. 301, § 9, provides as follows:

"SECTION 9. The provisions of this act shall not be construed to repeal or modify any provision of Mississippi law not expressly altered by this act, and furthermore does not establish a state policy that condones abortion."

Cross References —

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Health and Human Service regulations limiting ability of Federal Title X fund recipients to engage to abortion related activities were permissible construction of Title X, did not impose viewpoint-discriminatory conditions on government subsidy so as to violate First Amendment free speech rights of either private health care organizations that received Title X funds, their staffs, or their patients, and did not violate women's rights under due process clause of Fifth Amendment. Rust v. Sullivan, 500 U.S. 173, 111 S. Ct. 1759, 114 L. Ed. 2d 233, 1991 U.S. LEXIS 2908 (U.S. 1991).

State statute requiring that all second trimester abortions be performed in general acute care facilities is unconstitutional, since it unreasonably infringes upon women's constitutional right to obtain abortion; however, requirements that pathology report be made, that minor secure parental or judicial consent, and that second physician be present are constitutional. Planned Parenthood Ass'n v. Ashcroft, 462 U.S. 476, 103 S. Ct. 2517, 76 L. Ed. 2d 733, 1983 U.S. LEXIS 64 (U.S. 1983).

State requirement that second trimester abortions be performed in licensed clinics is constitutional. Simopoulos v. Virginia, 462 U.S. 506, 103 S. Ct. 2532, 76 L. Ed. 2d 755, 1983 U.S. LEXIS 65 (U.S. 1983).

§ 41-75-29. Transporting patient of abortion facility to hospital; ambulance services.

(1) If unforeseen complications arise prior to or during an abortion facility procedure, the patient shall be transferred to the nearest hospital.

(2) Each abortion facility shall make arrangements with a local ambulance service, duly licensed by the State of Mississippi, for the transport of emergency patients to a hospital and provide documentation to the department of proof of such arrangements.

HISTORY:

Laws, 1991, ch. 301, § 8, eff from and after July 1, 1990 (Governor's veto overridden by Legislature on January 17, 1991).

Editor's Notes —

Laws of 1991, ch. 301, § 9, provides as follows:

"SECTION 9. The provisions of this act shall not be construed to repeal or modify any provision of Mississippi law not expressly altered by this act, and furthermore does not establish a state policy that condones abortion."

CHAPTER 77.

LICENSING OF BIRTHING CENTERS

Sec.
41-77-1. Definitions.
41-77-3. Declaration of purpose.
41-77-5. Requirement of license.
41-77-7. Requirement of agreement with hospital.
41-77-9. Application for license; fee [Repealed effective July 1, 2020].
41-77-11. Rules, regulations, and standards.
41-77-13. Disclosure of information.
41-77-15. Time for compliance by centers already in operation.
41-77-17. Inspections and investigations.
41-77-19. Denial, suspension, or revocation of license; procedures.
41-77-21. Appeal procedures.
41-77-23. Penalties for violations.
41-77-25. Issuance, renewal, and posting of licenses [Repealed effective July 1, 2020].

§ 41-77-1. Definitions.

For purposes of this chapter:

(a) "Birthing center" shall mean a publicly or privately owned facility, place or institution constructed, renovated, leased or otherwise established where nonemergency births are planned to occur away from the mother's usual residence following a documented period of prenatal care for a normal uncomplicated pregnancy which has been determined to be low risk through a formal risk scoring examination. Care provided in a birthing center shall be provided by a licensed physician, or certified nurse midwife, and a registered nurse. Services provided in a birthing center shall be limited in the following manner: (i) surgical services shall be limited to those normally performed during uncomplicated childbirth, such as episiotomy and repair, and shall not include operative obstetrics or caesarean sections; (ii) labor shall not be inhibited, stimulated or augmented with chemical agents during the first or second stage of labor; (iii) systemic analgesia may be administered and local anesthesia for pudendal block and episiotomy repair may be performed. General and conductive anesthesia shall not be administered at birthing centers; (iv) patients shall not remain in the facility in excess of twenty-four (24) hours.

Hospitals are excluded from the definition of a "birthing center" unless they choose to and are qualified to designate a portion or part of the hospital as a birthing center, and nothing herein shall be construed as referring to the usual service provided the pregnant female in the obstetric-gynecology service of an acute care hospital. Such facility or center, as heretofore stated, shall include the offices of physicians in private practice alone or in groups of two (2) or more; and such facility or center rendering service to pregnant female persons, as stated heretofore and by the rules and regulations promulgated by the licensing agency in furtherance thereof, shall be deemed to be a "birthing center" whether using a similar or different name. Such center or facility if in any manner is deemed to be or considered to be operated or owned by a hospital or a hospital holding leasing or management company, for profit or not for profit, is required to comply with all birthing center standards governing a "hospital affiliated" birthing center as adopted by the licensing authority.

(b) "Hospital affiliated" birthing center shall mean a separate and distinct unit of a hospital or a building owned, leased, rented or utilized by a hospital and located in the same county as the hospital for the purpose of providing the service of a "birthing center." Such center or facility is not required to be licensed separately, and may operate under the license issued to the hospital if it is in compliance with Section 41-9-1 et seq., where applicable, and the rules and regulations promulgated by the licensing agency in furtherance thereof.

(c) "Freestanding" birthing center shall mean a separate and distinct facility or center or a separate and distinct organized unit of a hospital or other defined persons (Section 41-7-173(p)) for the purpose of performing the service of a "birthing center." Such facility or center must be separately licensed and must comply with all licensing standards promulgated by the licensing agency by virtue of this chapter. Further, such facility or center must be a separate, identifiable entity and must be physically, administratively and financially independent from other operations of any hospital or other health-care facility or service and shall maintain a separate and required staff, including administrative staff. Further, any "birthing center" licensed as a "freestanding" center shall not become a component of any hospital or other health-care facility without securing a "certificate of need."

(d) "Licensing agency" shall mean the State Department of Health.

HISTORY:

Laws, 1985, ch. 503, § 1; Laws, 1986, ch. 437, § 28, eff from and after July 1, 1986.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in clause (iii) of paragraph (a). The word "pudental" was changed to "pudendal". The Joint Committee ratified the correction at its December 3, 1996, meeting.

Cross References —

Mississippi Health Care Commission generally, see §§ 41-7-171 et seq.

§ 41-77-3. Declaration of purpose.

The purpose of this chapter is to protect and promote the public welfare by providing for the development, establishment and enforcement of certain standards in the maintenance and operation of "birthing centers" which will ensure safe, sanitary and reasonably adequate care of individuals in such institutions.

HISTORY:

Laws, 1985, ch. 503, § 2, eff from and after July 1, 1985.

§ 41-77-5. Requirement of license.

No person as defined in Section 41-7-173(p), Mississippi Code of 1972, acting severally or jointly with any other person, shall establish, conduct or maintain a "birthing center" in this state without a license under this chapter.

HISTORY:
Laws, 1985, ch. 503, § 3, eff from and after July 1, 1985.

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. 2d, Health §§ 25, 26.
51 Am. Jur. 2d, Licenses and Permits §§ 7, 9 et seq., 42 et seq.

CJS.
39A C.J.S., Health & Environment § 61.

§ 41-77-7. Requirement of agreement with hospital.

No license shall be issued to a "birthing center" until such "birthing center" shall have obtained a written agreement with a hospital which has an organized obstetrical service and provides such service on a continuing basis, stating that said hospital agrees to accept from the "birthing center" such cases as may need to be referred for whatever reason from the "birthing center".

HISTORY:
Laws, 1985, ch. 503, § 4, eff from and after July 1, 1985.

§ 41-77-9. Application for license; fee [Repealed effective July 1, 2020].

An application for a license shall be made to the licensing agency upon forms provided by it and shall contain such information as the licensing agency reasonably requires, which may include affirmative evidence of ability to comply with such reasonable standards, rules and regulations as are lawfully prescribed hereunder. Each application for a license shall be accompanied by a license fee of One Thousand Dollars ($1,000.00), which shall be paid to the licensing agency. Any increase in the fee charged by the licensing agency under this section shall be in accordance with the provisions of Section 41-3-65.

HISTORY:
Laws, 1985, ch. 503, § 5; Laws, 1986, ch. 500, § 28; Laws, 1998, ch. 433, § 6; Laws, 2016, ch. 510, § 24, eff from and after July 1, 2016.

Editor's Notes —
Laws of 2016, ch. 510, § 65 provides:
"SECTION 65. This act shall stand repealed on July 1, 2020."

RESEARCH REFERENCES

Am. Jur.
51 Am. Jur. 2d, Licenses and Permits §§ 38 et seq.

CJS.
53 C.J.S., Licenses §§ 137-150.

§ 41-77-11. Rules, regulations, and standards.

The licensing agency shall adopt, amend, promulgate and enforce rules, regulations and standards, including classifications, with respect to "birthing centers," licensed or which may be licensed, to further the accomplishment of the purpose of this chapter in protecting and promoting the health, safety and welfare of the public by ensuring adequate care of individuals receiving such services. Such rules, regulations and standards shall be adopted and promulgated by the licensing agency in accordance with the provisions of Section 25-43-1 et seq., Mississippi Code of 1972, and shall be recorded and indexed in a book to be maintained by the licensing agency in its office in the City of Jackson, Mississippi, entitled "Record of Rules, Regulations and Standards." The book shall be open and available to all "birthing centers" and the public during regular business hours.

HISTORY:
Laws, 1985, ch. 503, § 6, eff from and after July 1, 1985.

Editor's Notes —
Section 25-43-1.101(3) provides that any reference to Section 25-43-1 et seq. shall be deemed to mean and refer to Section 25-43-1.101 et seq.

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. 2d, Health §§ 35 et seq.

§ 41-77-13. Disclosure of information.

Information received by the licensing agency through filed reports, inspection or as otherwise authorized under this chapter shall not be disclosed publicly in such manner as to identify individuals except in a proceeding involving the questions of licensure.

HISTORY:
Laws, 1985, ch. 503, § 7, eff from and after July 1, 1985.

§ 41-77-15. Time for compliance by centers already in operation.

Any "birthing center" which is in operation at the time of promulgation of any applicable rules or regulations or minimum standards under this chapter shall be given a reasonable time, under the particular circumstances not to exceed one (1) year from the date such are duly adopted, with which to comply with such rules and regulations and minimum standards.

HISTORY:
Laws, 1985, ch. 503, § 8, eff from and after July 1, 1985.

§ 41-77-17. Inspections and investigations.

The licensing agency shall make or cause to be made such inspections and investigations as it deems necessary.

HISTORY:
Laws, 1985, ch. 503, § 9, eff from and after July 1, 1985.

§ 41-77-19. Denial, suspension, or revocation of license; procedures.

The licensing agency, after notice and opportunity for a hearing to the applicant or licensee, is authorized to deny, suspend or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established under this chapter. Such notice shall be effected by registered mail or by personal service setting forth the particular reasons for the proposed action and fixing a date not less than thirty (30) days from the date of such mailing or such service, at which time the applicant or licensee shall be given an opportunity for a prompt and fair hearing. On the basis of any such hearing, or upon default of the applicant or licensee, the licensing agency shall make a determination specifying its findings of fact and conclusions of law. A copy of such determination shall be sent by registered mail or served personally upon the applicant or licensee. The decision revoking, suspending or denying the license or application shall become final thirty (30) days after it is so mailed or served, unless the applicant or licensee, within such thirty-day period, appeals the decision in the manner prescribed in Section 43-11-23, Mississippi Code of 1972. The procedure governing hearings authorized by this section shall be in accordance with rules promulgated by the licensing agency. Testimony shall be recorded but not be transcribed unless the decision is appealed in accordance with said Section 43-11-23. Witnesses may be subpoenaed by either party. Compensation shall be allowed to witnesses as in cases in the chancery court. Each party shall pay the expense of his own witnesses. The cost of the record shall be paid by the licensing agency, provided any other party desiring a copy of the transcript shall pay therefor the reasonable cost of preparing the same.

HISTORY:

Laws, 1985, ch. 503, § 10, eff from and after July 1, 1985.

RESEARCH REFERENCES

Am. Jur.

51 Am. Jur. 2d, Licenses and Permits §§ 56 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (Complaint, petition, or declaration – by license holder – against administrative agency – to enjoin further proceedings to suspend or revoke license – attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

§ 41-77-21. Appeal procedures.

Any applicant or licensee aggrieved by the decision of the licensing agency after a hearing may, within thirty (30) days after the mailing or serving of notice of the decision as provided in Section 43-11-11, Mississippi Code of 1972, file a notice of appeal to the Chancery Court of the First Judicial District of Hinds County or in the chancery court of the county in which the institution is located or proposed to be located. If such notice of appeal is filed, it shall comply with Section 41-7-201(2), (3) and (4), Mississippi Code of 1972. Thereupon, the licensing agency shall, within the time and in the manner prescribed in Section

41-7-201(2), certify and file with the court a copy of the record and decision, including the transcript of the hearings in which the decision is based. No new or additional evidence shall be introduced in court; the case shall be determined upon the record certified to the court. The court may sustain or dismiss the appeal, modify or vacate the order complained of in whole or in part, as the case may be; but in case the order is wholly or partly vacated, the court may also, in its discretion, remand the matter to the licensing agency for such further proceedings, not inconsistent with the court's order, as, in the opinion of the court, justice may require. The order may not be vacated or set aside, either in whole or in part, except for errors of law, unless the court finds that the order of the licensing agency is not supported by substantial evidence, is contrary to the manifest weight of the evidence, is in excess of the statutory authority or jurisdiction of the licensing agency, or violates any vested constitutional rights of any party involved in the appeal. Pending final disposition of the matter, the status quo of the applicant or licensee shall be preserved, except as the court otherwise orders in the public interest. Rules with respect to court costs in other cases in chancery shall apply equally to cases hereunder. Appeals in accordance with law may be had to the Supreme Court of the State of Mississippi from any final judgment of the chancery court.

HISTORY:
Laws, 1985, ch. 503, § 11, eff from and after July 1, 1985.

Editor's Notes —
This section contains a reference to "Section 41-7-201(2), (3), and (4)." There are no subsections (3) and (4) in § 41-7-201.

Cross References —
Practice and procedure in the chancery court and in the Supreme Court, see § 11-5-1 et seq.

§ 41-77-23. Penalties for violations.

Any person or persons or other entity or entities establishing, managing or operating a "birthing center" or conducting the business of a "birthing center" without the required license, or which otherwise violate any of the provisions of this chapter or the Mississippi Health Care Commission Law of 1979, as amended, or the rules, regulations or standards promulgated in furtherance of any law in which the commission has authority therefor, shall be subject to the penalties and sanctions of Section 41-7-209, Mississippi Code of 1972.

HISTORY:
Laws, 1985, ch. 503, § 12, eff from and after July 1, 1985.

Cross References —
Mississippi Health Care Commission Law of 1979, see §§ 41-7-171 et seq.
"Birthing center" defined, see § 41-77-1.

RESEARCH REFERENCES

Am. Jur.
51 Am. Jur. 2d, Licenses and Permits §§ 73 et seq.

§ 41-77-25. Issuance, renewal, and posting of licenses [Repealed effective July 1, 2020].

Upon receipt of an application for license and the license fee, the licensing agency shall issue a license if the applicant and the institutional facilities meet the requirements established under this chapter and the requirements of Section 41-7-173 et seq., where determined by the licensing agency to be applicable. A license, unless suspended or revoked, shall be renewable annually upon payment of a renewal fee of Three Hundred Dollars ($300.00), which shall be paid to the licensing agency, and upon filing by the licensee and approval by the licensing agency of an annual report upon such uniform dates and containing such information in such form as the licensing agency requires. Any increase in the fee charged by the licensing agency under this section shall be in accordance with the provisions of Section 41-3-65. Each license shall be issued only for the premises and person or persons named in the application and shall not be transferable or assignable. Licenses shall be posted in a conspicuous place on the licensed premises.

HISTORY:

Laws, 1985, ch. 503, § 13; Laws, 1986, ch. 500, § 29; Laws, 2016, ch. 510, § 25, eff from and after July 1, 2016.

Editor's Notes —

Laws of 2016, ch. 510, § 65 provides:

"SECTION 65. This act shall stand repealed on July 1, 2020."

CHAPTER 79.

HEALTH PROBLEMS OF SCHOOL CHILDREN

School Nurse Intervention Program. 41-79-1
Head Lice. 41-79-21
Self-administration of Asthma Medication at School [Repealed] 41-79-31
Prevention of Unintended Teen Pregnancy and Sexually Transmitted Infections. .. 41-79-51

SCHOOL NURSE INTERVENTION PROGRAM

Sec.
41-79-1. Legislative findings.
41-79-3. Authorization to implement regulations.
41-79-5. School nurse intervention program.

§ 41-79-1. Legislative findings.

The Legislature finds that health problems often are not prevented or detected in early stages because so many of the state's children are not in a health-care system. A school nurse can provide the preventive health services needed to facilitate the student's optimal physical, mental, emotional and social growth and development, as well as to help prevent serious health problems which would be more difficult and costly to address later.

HISTORY:
Laws, 1987, ch. 505 § 1; reenacted, Laws, 1988, ch. 512, § 1, eff from and after June 30, 1988.

Editor's Notes —
Laws of 1987, ch. 505, § 4, provided for the automatic repeal of this section on July 1, 1988. Subsequently, Laws of 1988, ch. 512, § 4, amended Laws of 1987, ch. 507, § 4, so as to remove the repeal provision.

Cross References —
Transfer of School Nurse Intervention Program to the Office of Healthy Schools, see § 37-14-3(3).

§ 41-79-3. Authorization to implement regulations.

The State Board of Health, after consultation with the State Board of Education, is authorized to issue regulations to implement the provisions of this chapter.

HISTORY:
Laws, 1987, ch. 505 § 2; reenacted, Laws, 1988, ch. 512, § 2, eff from and after June 30, 1988.

Editor's Notes —
Laws of 1987, ch. 505, § 4, provided for the automatic repeal of this section on July 1, 1988. Subsequently, Laws of 1988, ch. 512, § 4, amended Laws of 1987, ch. 507, § 4, so as to remove the repeal provision.

Cross References —
Transfer of School Nurse Intervention Program to the Office of Healthy Schools, see § 37-14-3(3).

§ 41-79-5. School nurse intervention program.

(1) There is hereby established within the State Department of Health a school nurse intervention program, available to all public school districts in the state.

(2) By the school year 1998-1999, each public school district shall have employed a school nurse, to be known as a Health Service Coordinator, pursuant to the school nurse intervention program prescribed under this section. The school nurse intervention program shall offer any of the following specific preventive services, and other additional services appropriate to each grade level and the age and maturity of the pupils:

(a) Reproductive health education and referral to prevent teen pregnancy and sexually transmitted diseases, which education shall include abstinence;

(b) Child abuse and neglect identification;

(c) Hearing and vision screening to detect problems which can lead to serious sensory losses and behavioral and academic problems;

(d) Alcohol, tobacco and drug abuse education to reduce abuse of these substances;

(e) Scoliosis screening to detect this condition so that costly and painful surgery and lifelong disability can be prevented;

(f) Coordination of services for handicapped children to ensure that these children receive appropriate medical assistance and are able to remain in public school;

(g) Nutrition education and counseling to prevent obesity and/or other eating disorders which may lead to life-threatening conditions, for example, hypertension;

(h) Early detection and treatment of head lice to prevent the spread of the parasite and to reduce absenteeism;

(i) Emergency treatment of injury and illness to include controlling bleeding, managing fractures, bruises or contusions and cardiopulmonary resuscitation (CPR);

(j) Applying appropriate theory as the basis for decision making in nursing practice;

(k) Establishing and maintaining a comprehensive school health program;

(*l*) Developing individualized health plans;

(m) Assessing, planning, implementing and evaluating programs and other school health activities, in collaboration with other professionals;

(n) Providing health education to assist students, families and groups to achieve optimal levels of wellness;

(o) Participating in peer review and other means of evaluation to assure quality of nursing care provided for students and assuming responsibility for continuing education and professional development for self while contributing to the professional growth of others;

(p) Participating with other key members of the community responsible for assessing, planning, implementing and evaluating school health services and community services that include the broad continuum or promotion of primary, secondary and tertiary prevention; and

(q) Contributing to nursing and school health through innovations in theory and practice and participation in research.

(3) Public school nurses shall be specifically prohibited from providing abortion counseling to any student or referring any student to abortion counseling or abortion clinics. Any violation of this subsection shall disqualify the school district employing such public school nurse from receiving any state administered funds under this section.

(4) Repealed.

(5) Beginning with the 1997-1998 school year, to the extent that federal or state funds are available therefor and pursuant to appropriation therefor by the Legislature, in addition to the school nurse intervention program funds administered under subsection (4), the State Department of Health shall establish and implement a Prevention of Teen Pregnancy Pilot Program to be located in the public school districts with the highest numbers of teen pregnancies. The Teen Pregnancy Pilot Program shall provide the following education services directly through public school nurses in the pilot school districts: health education sessions in local schools, where contracted for or invited to provide, which target issues including reproductive health, teen pregnancy prevention and sexually transmitted diseases, including syphilis, HIV and AIDS. When these services are provided by a school nurse, training and counseling on abstinence shall be included.

(6) In addition to the school nurse intervention program funds administered under subsection (4) and the Teen Pregnancy Pilot Program funds administered under subsection (5), to the extent that federal or state funds are available therefor and pursuant to appropriation therefor by the Legislature, the State Department of Health shall establish and implement an Abstinence Education Pilot Program to provide abstinence education, mentoring, counseling and adult supervision to promote abstinence from sexual activity, with a focus on those groups which are most likely to bear children out of wedlock. Such abstinence education services shall be provided by the State Department of Health through its clinics, public health nurses, school nurses and through contracts with rural and community health centers in order to reach a larger number of targeted clients. For purposes of this subsection, the term “abstinence education” means an educational or motivational program which:

(a) Has as its exclusive purpose, teaching the social, psychological and health gains to be realized by abstaining from sexual activity;

(b) Teaches abstinence from sexual activity outside marriage as the expected standard for all school-age children;

(c) Teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases and other associated health problems;

(d) Teaches that a mutually faithful monogamous relationship in context of marriage is the expected standard of human sexual activity;

(e) Teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects;

(f) Teaches that bearing children out of wedlock is likely to have harmful consequences for the child, the child’s parents and society;

(g) Teaches young people how to reject sexual advances and how alcohol and drug use increase vulnerability to sexual advances; and

(h) Teaches the importance of attaining self-sufficiency before engaging in sexual activity.

(7) Beginning with the 1998-1999 school year and pursuant to appropriation therefor by the Legislature, in addition to other funds allotted under the minimum education program, each school district shall be allotted an additional teacher unit per every one hundred (100) teacher units, for the purpose of employing qualified public school nurses in such school district, which in no event shall be less than one (1) teacher unit per school district, for such purpose. In the event the Legislature provides less funds than the total state funds needed for the public school nurse allotment, those school districts with fewer teacher units shall be the first funded for such purpose, to the extent of funds available.

(8) Prior to the 1998-1999 school year, nursing staff assigned to the program shall be employed through the local county health department and shall be subject to the supervision of the State Department of Health with input from local school officials. Local county health departments may contract with any comprehensive private primary health-care facilities within their county to employ and utilize additional nursing staff. Beginning with the 1998-1999 school year, nursing staff assigned to the program shall be employed by the local school district and shall be designated as "health service coordinators," and shall be required to possess a bachelor's degree in nursing as a minimum qualification.

(9) Upon each student's enrollment, the parent or guardian shall be provided with information regarding the scope of the school nurse intervention program. The parent or guardian may provide the school administration with a written statement refusing all or any part of the nursing service. No child shall be required to undergo hearing and vision or scoliosis screening or any other physical examination or tests whose parent objects thereto on the grounds such screening, physical examination or tests are contrary to his sincerely held religious beliefs.

(10) A consent form for reproductive health education shall be sent to the parent or guardian of each student upon his enrollment. If a response from the parent or guardian is not received within seven (7) days after the consent form is sent, the school shall send a letter to the student's home notifying the parent or guardian of the consent form. If the parent or guardian fails to respond to the letter within ten (10) days after it is sent, then the school principal shall be authorized to allow the student to receive reproductive health education. Reproductive health education shall include the teaching of total abstinence from premarital sex and, wherever practicable, reproductive health education should be taught in classes divided according to gender. All materials used in the reproductive health education program shall be placed in a convenient and easily accessible location for parental inspection. School nurses shall not dispense birth control pills or contraceptive devices in the school. Dispensing of such shall be the responsibility of the State Department of Health on a referral basis only.

(11) No provision of this section shall be construed as prohibiting local school districts from accepting financial assistance of any type from the State

of Mississippi or any other governmental entity, or any contribution, donation, gift, decree or bequest from any source which may be utilized for the maintenance or implementation of a school nurse intervention program in a public school system of this state.

HISTORY:

Laws, 1987, ch. 505 § 3; reenacted and amended, Laws, 1988, ch. 512, § 3; Laws, 1994, ch. 632, § 3; Laws, 1997, ch. 316, § 26; Laws, 1999, ch. 373, § 1; Laws, 2000, ch. 390, § 1; Laws, 2000, ch. 423, § 1, eff from and after July 1, 2000.

Joint Legislative Committee Note —

Section 1 of ch. 390, Laws of 2000, effective from and after July 1, 2000 (approved March 17, 2000), amended this section. Section 1 of ch. 423, Laws of 2000, effective from and after July 1, 2000 (approved March 18, 2000), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 423, Laws of 2000, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the sections are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Notes —

Laws of 1987, ch. 505, § 4, provided for the automatic repeal of this section on July 1, 1988. Subsequently, Laws of 1988, ch. 512, § 4, amended Laws of 1987, ch. 505, § 4, so as to remove the repeal provision.

Laws of 1990, ch. 588, § 30, amended this section effective July 1, 1990, provided the Legislature by concurrent resolution adopted by the House and Senate in session prior to July 1, 1990, declared that sufficient funds were dedicated and made available for the implementation of Chapter 588. Funds, however, were not made available by the Legislature prior to July 1, 1990, and by direction of the Office of the Attorney General of the State of Mississippi, the amendatory provisions have not been printed. Text of the proposed amendment can be found in the 1990 General Laws of Mississippi.

Subsection (4) has been set out as repealed, effective July 1, 2001, pursuant to its own terms.

Cross References —

Transfer of School Nurse Intervention Program to the Office of Healthy Schools, see § 37-14-3(3).

RESEARCH REFERENCES

ALR.

Validity, construction, and application of state statute requiring doctor or other person to report child abuse. 73 A.L.R.4th 782.

Propriety of prophylactic availability programs. 52 A.L.R.5th 477.

Am. Jur.

38 Am. Jur. Trials 1, Professional Liability for Failure to Report Child Abuse.

HEAD LICE

Sec.
41-79-21. Notification by school officials of recurrent head lice.

§ 41-79-21. Notification by school officials of recurrent head lice.

If a student in any public elementary or secondary school has had head lice on three (3) occasions during one (1) school year while attending school, or if the parent of the student has been notified by school officials that the student has had head lice on three (3) occasions in one (1) school year, as determined by the school nurse, public health nurse or a physician, the principal or administrator shall notify the county health department of the recurring problem of head lice with that student. The county health department then shall instruct the child's parents or guardians on how to treat head lice, eliminate head lice from household items, and prevent the recurrence of head lice. The county health department shall charge the child's parents or guardians a fee to recover its costs of providing treatment and counseling for the head lice. The school principal or administrator shall not allow the child to attend school until proof of treatment is obtained.

HISTORY:
Laws, 1997, ch. 510, § 1; Laws, 1999, ch. 348, § 1, eff from and after July 1, 1999.

SELF-ADMINISTRATION OF ASTHMA MEDICATION AT SCHOOL
[REPEALED]

Sec.
41-79-31. Repealed.

§ 41-79-31. Repealed.

Repealed by Laws, 2014, ch. 464, § 3, effective from and after July 1, 2014.

§ 41-79-31. [Laws, 2003, ch. 493, § 1; Laws, 2010, ch. 512, § 1, eff from and after July 1, 2010.]

Editor's Notes —
Former § 41-79-31 provided for the self-administration of asthma medication at school. For present similar provisions, see § 37-11-71.

PREVENTION OF UNINTENDED TEEN PREGNANCY AND SEXUALLY TRANSMITTED INFECTIONS

Sec.	
41-79-51.	Repealed.
41-79-53.	Programs to provide education, counseling, support and training to prevent unintended teen pregnancies and sexually transmitted infections; implementation by school nurses.
41-79-55.	Pilot programs to be established in each health care district and located in a school district in the county having highest number of teen pregnancies.

§ 41-79-51. Repealed.

Repealed by its own terms effective July 1, 2016.

§ 41-79-51. [Laws, 2009, ch. 507, § 2; Laws, 2011, ch. 430, § 4, eff from and after July 1, 2011.]

Editor's Notes —
Former § 41-79-51 created the Teen Pregnancy Prevention Task Force and provided for its composition, staff and duties.

§ 41-79-53. Programs to provide education, counseling, support and training to prevent unintended teen pregnancies and sexually transmitted infections; implementation by school nurses.

(1) The Mississippi Department of Human Services shall develop programs to accomplish the purpose of one or more of the following strategies:

(a) Promoting effective communication among families about preventing teen pregnancy, particularly communication among parents or guardians and their children;

(b) Educating community members about the consequences of unprotected, uninformed and underage sexual activity and teen pregnancy;

(c) Encouraging young people to postpone sexual activity and prepare for a healthy, successful adulthood, including teaching them skills to avoid making or receiving unwanted verbal, physical, and sexual advances;

(d) Providing medically accurate information about the health benefits and side effects of all contraceptives and barrier methods as a means to prevent pregnancy and reduce the risk of contracting sexually transmitted infections, including HIV/AIDS; or

(e) Providing educational information, including medically accurate information about the health benefits and side effects of all contraceptives and barrier methods, for young people in those communities who are already sexually active or are at risk of becoming sexually active and inform young people in those communities about the responsibilities and consequences of being a parent, and how early pregnancy and parenthood can interfere with educational and other goals.

(2) The State Department of Health shall develop programs with the following strategies:

(a) To carry out activities, including counseling, to prevent unintended pregnancy and sexually transmitted infections, including HIV/AIDS, among teens;

(b) To provide necessary social and cultural support services regarding teen pregnancy;

(c) To provide health and educational services related to the prevention of unintended pregnancy and sexually transmitted infections, including HIV/AIDS, among teens;

(d) To promote better health and educational outcomes among pregnant teens; and

(e) To provide training for individuals who plan to work in school-based support programs regarding the prevention of unintended pregnancy and sexually transmitted infections, including HIV/AIDS, among teens.

(3) It shall be the responsibility of school nurses employed by local school districts implementing the program developed by the State Department of Health under subsection (2) of this section to carry out the functions of those strategies to promote consistency in the administration of the program.

HISTORY:
Laws, 2011, ch. 430, § 2, eff from and after July 1, 2011.

§ 41-79-55. Pilot programs to be established in each health care district and located in a school district in the county having highest number of teen pregnancies.

(1) Beginning with the 2012-2013 school year, to the extent that federal or state funds are available and appropriated by the Legislature for the purposes of establishing and implementing the Prevention of Teen Pregnancy Pilot Program authorized by Section 41-79-5, the State Department of Health in conjunction with the State Department of Education shall establish a pilot program in each of the nine (9) health districts as defined by the State Department of Health, to be located in a school district in a county in that district having the highest number of teen pregnancies.

(2) The State Department of Health and the State Department of Education shall jointly provide education services through qualified personnel to increase awareness of the health, social and economic risks associated with teen pregnancy. The services and curriculum provided shall have a primary emphasis on reducing the teenage pregnancy rate in those pilot districts.

HISTORY:
Laws, 2011, ch. 430, § 5, eff from and after July 1, 2011.

CHAPTER 81.

PERINATAL HEALTH CARE

Sec.
41-81-1. Authorization for regionalized service system.
41-81-3. Contracts with and grants to health-care providers.

§ 41-81-1. Authorization for regionalized service system.

The State Department of Health is authorized to coordinate the development and implementation of a regionalized system of perinatal health-care services.

HISTORY:
Laws, 1987, ch. 514, § 1, eff from and after July 1, 1987.

Cross References —
Municipal support of prenatal services, § 21-19-65.

Public assistance funds for prenatal services for medically needy children, § 43-13-115.

§ 41-81-3. Contracts with and grants to health-care providers.

The State Department of Health is authorized to enter into contracts with and provide grants to health-care providers in order to implement a statewide regionalization program.

HISTORY:
Laws, 1987, ch. 514, § 2, eff from and after July 1, 1987.

Cross References —
Municipal support of prenatal services, § 21-19-65.

Public assistance funds for prenatal services for medically needy children, § 43-13-115.

CHAPTER 83.

UTILIZATION REVIEW OF AVAILABILITY OF HOSPITAL RESOURCES AND MEDICAL SERVICES

Sec.
41-83-1. Definitions.
41-83-3. Certificate requirement for utilization review; nontransferability; disclosure to public.
41-83-5. Certificate requirement for general in-house utilization review; exemptions.
41-83-7. Application for certificate; fees.
41-83-9. Submission of information in conjunction with application.
41-83-11. Expiration date of certificate; renewal; fees.
41-83-13. Grounds for denial or revocation of certificate; time to supply additional information; hearing.
41-83-15. Reporting requirements to evaluate and determine compliance.
41-83-17. Disclosure or publication of information; consent or authorization; court order.
41-83-19. Penalties for violations.
41-83-21. Certification of need of immediate hospital care; prima facie evidence.
41-83-23. Judicial review; other remedies.
41-83-25. Health insurance plans; certificate requirement; contract with private review agent; reimbursement under policy where medical necessity in dispute.
41-83-27. Other health insurance policies; certificate requirement; contract with private review agent; reimbursement under policy where medical necessity in dispute.
41-83-29. Group or blanket health insurance policies; certificate requirement; contract with private review agent.
41-83-31. Adverse determination to patient or health-care provider; discussion of reasons; denial of third party reimbursement or precertification; evaluation by trained specialist.

§ 41-83-1. Definitions.

As used in this chapter, the following terms shall be defined as follows:

(a) "Utilization review" means a system for reviewing the appropriate and efficient allocation of hospital resources and medical services given or proposed to be given to a patient or group of patients as to necessity for the purpose of determining whether such service should be covered or provided by an insurer, plan or other entity.

(b) "Private review agent" means a nonhospital-affiliated person or entity performing utilization review on behalf of:

(i) An employer or employees in the State of Mississippi; or

(ii) A third party that provides or administers hospital and medical benefits to citizens of this state, including: a health maintenance organization issued a certificate of authority under and by virtue of the laws of the State of Mississippi; or a health insurer, nonprofit health service plan, health insurance service organization, or preferred provider organization or other entity offering health insurance policies, contracts or benefits in this state.

(c) "Utilization review plan" means a description of the utilization review procedures of a private review agent.

(d) "Department" means the Mississippi State Department of Health.

(e) "Certificate" means a certificate of registration granted by the Mississippi State Department of Health to a private review agent.

HISTORY:
Laws, 1990, ch. 347, § 1, eff from and after July 1, 1990.

§ 41-83-3. Certificate requirement for utilization review; nontransferability; disclosure to public.

(1) A private review agent who approves or denies payment or who recommends approval or denial of payment for hospital or medical services or whose review results in approval or denial of payment for hospital or medical services on a case by case basis, may not conduct utilization review in this state unless the Mississippi State Department of Health has granted the private review agent a certificate.

(2) The Mississippi State Department of Health shall issue a certificate to an applicant that has met all the requirements of this chapter and all applicable regulations of the department.

(3) A certificate issued under this chapter is not transferable.

(4) The State Department of Health shall adopt regulations to implement the provisions of this chapter. Any information required by the department with respect to customers or patients shall be held in confidence and not disclosed to the public.

HISTORY:
Laws, 1990, ch. 347, § 2; Laws, 1994, ch. 378, § 1, eff from and after July 1, 1994.

§ 41-83-5. Certificate requirement for general in-house utilization review; exemptions.

No certificate is required for those private review agents conducting general in-house utilization review for hospitals, home health agencies, preferred provider organizations or other managed care entities, clinics, private physician offices or any other health facility or entity, so long as the review does not result in the approval or denial of payment for hospital or medical services for a particular case. Such general in-house utilization review is completely exempt from the provisions of this chapter.

HISTORY:
Laws, 1990, ch. 347, § 3, eff from and after July 1, 1990.

§ 41-83-7. Application for certificate; fees.

(1) An applicant for a certificate shall:

(a) Submit an application to the department; and

(b) Pay to the department the application fee established by the department through regulation.

(2) The application shall:

(a) Be on a form and accompanied by any supporting documentation that the department requires; and

(b) Be signed and verified by the applicant.

(3) The application fee required under this section shall be sufficient to pay for the administrative cost of the certification program and any other cost associated with carrying out the provisions of this chapter.

HISTORY:

Laws, 1990, ch. 347, § 4, eff from and after July 1, 1990.

§ 41-83-9. Submission of information in conjunction with application.

In conjunction with the application, the private review agent shall submit information that the department requires including:

(a) A utilization review plan that includes a description of review criteria, standards and procedures to be used in evaluating proposed or delivered hospital and medical care and the provisions by which patients, physicians or hospitals may seek reconsideration or appeal of adverse decisions by the private review agent;

(b) The type and qualifications of the personnel either employed or under contract to perform the utilization review;

(c) The procedures and policies to insure that a representative of the private review agent is reasonably accessible to patients and providers at all times in this state;

(d) The policies and procedures to insure that all applicable state and federal laws to protect the confidentiality of individual medical records are followed;

(e) A copy of the materials designed to inform applicable patients and providers of the requirements of the utilization review plan; and

(f) A list of the third party payors for which the private review agent is performing utilization review in this state.

HISTORY:

Laws, 1990, ch. 347, § 5, eff from and after July 1, 1990.

Joint Legislative Committee Note —

In 2009, an enacting error in this section was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication by removing the subsection (1) designation preceding "In conjunction with..." As enacted by Section 5 of Chapter 347, Laws of 1990, the section contained a subsection (1) but no subsection (2). The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 41-83-11. Expiration date of certificate; renewal; fees.

(1) A certificate expires on the second anniversary of its effective date unless the certificate is renewed for a two-year term as provided in this section.

(2) Before the certificate expires, a certificate may be renewed for an additional two-year term if the applicant:

(a) Otherwise is entitled to the certificate;

(b) Pays the department the renewal fee set by the department through regulation; and

(c) Submits to the department a renewal application on the form that the department requires and satisfactory evidence of compliance with any requirement of this chapter for certificate renewal.

HISTORY:
Laws, 1990, ch. 347, § 6, eff from and after July 1, 1990.

§ 41-83-13. Grounds for denial or revocation of certificate; time to supply additional information; hearing.

(1) The department shall deny a certificate to any applicant if, upon review of the application, the department finds that the applicant proposing to conduct utilization review does not:

(a) Have available the services of a physician to carry out its utilization review activities;

(b) Meet any applicable regulations the department adopted under this chapter relating to the qualifications of private review agents or the performance of utilization review; and

(c) Provide assurances satisfactory to the department that the procedure and policies of the private review agent will protect the confidentiality of medical records and the private review agent will be reasonably accessible to patients and providers for five (5) working days a week during normal business hours in this state.

(2) The department may revoke or deny a certificate if the holder does not comply with the performance assurances under this section, violates any provision of this chapter, or violates any regulation adopted pursuant to this chapter.

(3) Before denying or revoking a certificate under this section, the department shall provide the applicant or certificate holder with reasonable time to supply additional information demonstrating compliance with the requirements of this chapter and the opportunity to request a hearing. If an applicant or certificate holder requests a hearing, the department shall send a hearing notice and conduct a hearing in accordance with the Mississippi Administrative Procedure Law, Section 25-43-17, Mississippi Code of 1972.

HISTORY:
Laws, 1990, ch. 347, § 7, eff from and after July 1, 1990.

Editor's Notes —
Section 25-43-1.101 provides that, from and after July 1, 2005, any reference to §§ 25-43-1 et seq. means and refers to the Mississippi Administrative Procedures Act, §§ 25-43-1.101 et seq. Section 25-43-17, referred to in (3), was repealed by Laws of 2003, ch. 304, § 26, effective July 1, 2005.

§ 41-83-15. Reporting requirements to evaluate and determine compliance.

The department shall establish reporting requirements to:

(a) Evaluate the effectiveness of private review agents; and

(b) Determine if the utilization review programs are in compliance with the provisions of this section and applicable regulations.

HISTORY:
Laws, 1990, ch. 347, § 8, eff from and after July 1, 1990.

§ 41-83-17. Disclosure or publication of information; consent or authorization; court order.

A private review agent may not disclose or publish individual medical records or any other confidential medical information obtained in the performance of utilization review activities without the patient's authorization or an order of a county, circuit or chancery court of Mississippi or a U.S. district court. Provided, however, that nothing in this chapter shall prohibit private review agents from providing information to a third party with whom the private review agent is under contract or acting on behalf of.

HISTORY:
Laws, 1990, ch. 347, § 9, eff from and after July 1, 1990.

§ 41-83-19. Penalties for violations.

A person who violates any provision of this chapter or any regulation adopted under this chapter is guilty of a misdemeanor and on conviction is subject to a penalty not exceeding One Thousand Dollars ($1,000.00).

HISTORY:
Laws, 1990, ch. 347, § 10, eff from and after July 1, 1990.

Cross References —
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 41-83-21. Certification of need of immediate hospital care; prima facie evidence.

Notwithstanding language to the contrary elsewhere contained herein, if a licensed physician certifies in writing to an insurer within seventy-two (72) hours of an admission that the insured person admitted was in need of immediate hospital care, such shall constitute a prima facie case of the medical necessity of the admission. To overcome this, the entity requesting the utilization review and/or the private review agent must show by clear and convincing evidence that the admitted person was not in need of immediate hospital care.

HISTORY:
Laws, 1990, ch. 347, § 11, eff from and after July 1, 1990.

§ 41-83-23. Judicial review; other remedies.

Any person aggrieved by a final decision of the department or a private review agent in a contested case under this chapter shall have the right of judicial appeal to the chancery court of the county of the residence of the aggrieved person.

Notwithstanding any provision of this chapter, the insured shall have the express right to pursue any legal remedies he may have in a court of competent jurisdiction.

HISTORY:
Laws, 1990, ch. 347, § 12, eff from and after July 1, 1990.

§ 41-83-25. Health insurance plans; certificate requirement; contract with private review agent; reimbursement under policy where medical necessity in dispute.

(1) Every health insurance plan proposing to issue or deliver a health insurance policy or contract or administer a health benefit program which provides for the coverage of hospital and medical benefits and the utilization review of those benefits shall:

(a) Have a certificate in accordance with this chapter; or

(b) Contract with a private review agent who has a certificate in accordance with this chapter.

(2) Notwithstanding any other provisions of this chapter, for claims where the medical necessity of the provision of a covered benefit is disputed, a health service plan that does not meet the requirements of subsection (1) of this section shall pay any person or hospital entitled to reimbursement under the policy or contract.

HISTORY:
Laws, 1990, ch. 347, § 13, eff from and after July 1, 1990.

§ 41-83-27. Other health insurance policies; certificate requirement; contract with private review agent; reimbursement under policy where medical necessity in dispute.

(1) Every insurer proposing to issue or deliver a health insurance policy or contract or administer a health benefit program which provides for the coverage of hospital and medical benefits and the utilization review of such benefits shall:

(a) Have a certificate in accordance with this chapter; or

(b) Contract with a private review agent that has a certificate in accordance with this chapter.

(2) Notwithstanding any provision of this chapter, for claims where the medical necessity of the provision of a covered benefit is disputed, an insurer that does not meet the requirements of subsection (1) of this section shall pay any person or hospital entitled to reimbursement under the policy or contract.

HISTORY:
Laws, 1990, ch. 347, § 14, eff from and after July 1, 1990.

§ 41-83-29. Group or blanket health insurance policies; certificate requirement; contract with private review agent.

Any health insurer proposing to issue or deliver in this state a group or blanket health insurance policy or administer a health benefit program which provides for the coverage of hospital and medical benefits and the utilization review of such benefits shall:

(a) Have a certificate in accordance with this chapter; or

(b) Contract with a private review agent that has a certificate in accordance with this chapter.

HISTORY:

Laws, 1990, ch. 347, § 15, eff from and after July 1, 1990.

§ 41-83-31. Adverse determination to patient or health-care provider; discussion of reasons; denial of third party reimbursement or precertification; evaluation by trained specialist.

Any program of utilization review with regard to hospital, medical or other health-care services provided in this state shall comply with the following:

(a) No determination adverse to a patient or to any affected health-care provider shall be made on any question relating to the necessity or justification for any form of hospital, medical or other health-care services without prior evaluation and concurrence in the adverse determination by a physician licensed to practice in Mississippi. The physician who made the adverse determination shall discuss the reasons for any adverse determination with the affected health-care provider, if the provider so requests. The physician shall comply with this request within fourteen (14) calendar days of being notified of a request. Adverse determination by a physician shall not be grounds for any disciplinary action against the physician by the State Board of Medical Licensure.

(b) Any determination regarding hospital, medical or other health-care services rendered or to be rendered to a patient which may result in a denial of third-party reimbursement or a denial of precertification for that service shall include the evaluation, findings and concurrence of a physician trained in the relevant specialty or subspecialty, if requested by the patient's physician, to make a final determination that care rendered or to be rendered was, is, or may be medically inappropriate.

(c) The requirement in this section that the physician who makes the evaluation and concurrence in the adverse determination must be licensed to practice in Mississippi shall not apply to the Comprehensive Health Insurance Risk Pool Association or its policyholders and shall not apply to any utilization review company which reviews fewer than ten (10) persons residing in the State of Mississippi.

HISTORY:

Laws, 1990, ch. 347, § 16; Laws, 1998, ch. 508, § 1; Laws, 2000, ch. 443, § 1, eff from and after July 1, 2000.

OPINIONS OF THE ATTORNEY GENERAL

The board of medical licensure may adopt regulations which set professional standards for physicians performing utilization review activities and provide for disciplinary action for physicians found to be in violation thereof. 2006 Miss. Op. Att'y Gen. 324.

CHAPTER 85.

MISSISSIPPI HOSPICE LAW OF 1995

Sec.	
41-85-1.	Short title.
41-85-3.	Definitions.
41-85-5.	Operation of hospice without license; display of license; transfer of license; services constituting hospice program of care; effect of local zoning laws upon location of hospice.
41-85-7.	Administration of chapter; powers and duties of administrator; collection and use of fees; suspension of processing or issuing certain new applications for hospice licensure [Subsection (3) repealed effective July 1, 2022; Section repealed effective July 1, 2020].
41-85-9.	Inspections and investigations.
41-85-11.	Application for license; plan for delivery of hospice care; duration of license; renewal of license; conditional license.
41-85-13.	Denial, revocation or suspension of license.
41-85-15.	Coordination with other providers by hospices; contractual arrangements for provision of hospice care; administration and elements of hospice care generally.
41-85-17.	Components or modes of hospice programs.
41-85-19.	Government and administration of hospice program.
41-85-21.	Recordkeeping requirements.
41-85-23.	Disclosure of information received through hospice program.
41-85-25.	Advertisement of hospice program; penalties.

Editor's Notes —

Former §§ 41-85-1 through 41-85-25, derived from Laws of 1990, ch. 466, §§ 1-13, which was known as the Mississippi Hospice Law of 1992, administered by the Department of Health, and required the licensing of hospices, was repealed by Laws of 1990, ch. 466, § 14, effective from and after July 1, 1992.

§ 41-85-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Hospice Law of 1995."

HISTORY:

Laws, 1995, ch. 325, § 1, eff from and after July 1, 1995.

§ 41-85-3. Definitions.

When used in this chapter, unless the context otherwise requires:

(a) "Autonomous" means a separate and distinct operational entity which functions under its own administration and bylaws, either within or independently of a parent organization.

(b) "Department" means the Mississippi Department of Health.

(c) "Freestanding hospice" means a hospice that is not a part of any other type of health-care provider.

(d) "Hospice" means an autonomous, centrally administered, nonprofit or profit, medically directed, nurse-coordinated program providing a continuum of home, outpatient and homelike inpatient care for not less than four (4) terminally ill patients and their families. It employs a hospice care team to assist in providing palliative and supportive care to meet the special needs arising out of the physical, emotional, spiritual, social and economic stresses which are experienced during the final stages of illness and during dying and bereavement. This care is available twenty-four (24) hours a day, seven (7) days a week, and is provided on the basis of need regardless of inability to pay.

(e) "Hospice care team" means an interdisciplinary team which is a working unit composed by the integration of the various helping professions and lay persons providing hospice care. Such team shall, as a minimum, consist of a licensed physician, a registered nurse, a social worker, a member of the clergy or a counselor and volunteers.

(f) "Hospice services" means items and services furnished to an individual by a hospice, or by others under arrangements with such a hospice program.

(g) "Medically directed" means that the delivery of medical care is directed by a licensed physician who is employed by the hospice for the purpose of providing ongoing palliative care as a participating care giver on the hospice care team.

(h) "Palliative care" means the reduction or abatement of pain and other troubling symptoms by appropriate coordination of all elements of the hospice care team needed to achieve needed relief of distress.

(i) "Patient" means the terminally ill individual receiving hospice services.

(j) "Person" means an individual, a trust or estate, partnership, corporation, association, the state, or a political subdivision or agency of the state.

(k) "Terminally ill" refers to a medical prognosis of limited expected survival, of six (6) months or less at the time of referral to a hospice, of an individual who is experiencing an illness for which therapeutic strategies directed toward cure and control of the disease alone outside the context of symptom control are no longer appropriate.

HISTORY:
Laws, 1995, ch. 325, § 2; Laws, 1996, ch. 369, § 1; Laws, 2006, ch. 322, § 1, eff from and after July 1, 2006.

RESEARCH REFERENCES

ALR.
Valuing damages in personal injury actions awarded for gratuitously rendered nursing and medical care. 49 A.L.R.5th 685.

§ 41-85-5. Operation of hospice without license; display of license; transfer of license; services constituting hospice program of care; effect of local zoning laws upon location of hospice.

(1) It is unlawful for a person to operate or maintain a hospice, use the title "hospice", or represent that the person provides a hospice program of care, without first obtaining a license therefor from the department.

(2) The license shall be displayed in a conspicuous place inside the hospice program office; shall be valid only in the possession of the person to which it is issued; shall not be subject to sale, assignment or other transfer, voluntary or

involuntary; and shall not be valid for any hospice other than the hospice for which originally issued.

(3) Services provided by a hospital, nursing home or other health-care facility or health-care provider shall not be considered to constitute a hospice program of care unless such facility, provider or care giver establishes a freestanding or distinct hospice unit, staff, facility and services to provide hospice home care, homelike inpatient hospice care, or outpatient hospice care under the separate and distinct administrative authority of a hospice program.

(4) A license for a hospice program shall not be issued if the hospice is to be located in an area in violation of any local zoning ordinances or regulations.

HISTORY:

Laws, 1995, ch. 325, § 3, eff from and after July 1, 1995.

RESEARCH REFERENCES

Am. Jur.

40A Am. Jur. 2d, Hospitals and Asylums §§ 13 et seq.

§ 41-85-7. Administration of chapter; powers and duties of administrator; collection and use of fees; suspension of processing or issuing certain new applications for hospice licensure [Subsection (3) repealed effective July 1, 2022; Section repealed effective July 1, 2020].

(1) The administration of this chapter is vested in the Mississippi Department of Health, which shall:

(a) Prepare and furnish all forms necessary under the provisions of this chapter in relation to applications for licensure or renewals thereof;

(b) Collect in advance at the time of filing an application for a license or at the time of renewal of a license a fee of One Thousand Dollars ($1,000.00) for each site or location of the licensee; any increase in the fee charged by the department under this paragraph shall be in accordance with the provisions of Section 41-3-65;

(c) Levy a fee of Eighteen Dollars ($18.00) per bed for the review of inpatient hospice care; any increase in the fee charged by the department under this paragraph shall be in accordance with the provisions of Section 41-3-65;

(d) Conduct annual licensure inspections of all licensees which may be the same inspection as the annual Medicare certification inspection; and

(e) Promulgate applicable rules and standards in furtherance of the purpose of this chapter and may amend such rules as may be necessary. The rules shall include, but not be limited to, the following:

(i) The qualifications of professional and ancillary personnel in order to adequately furnish hospice care;

(ii) Standards for the organization and quality of patient care;

(iii) Procedures for maintaining records; and

(iv) Provision for the inpatient component of hospice care and for other professional and ancillary hospice services.

(2) All fees collected by the department under this section shall be used by the department exclusively for the purposes of licensure, regulation, inspection, investigations and discipline of hospices under this chapter.

(3) The State Department of Health shall not process any new applications for hospice licensure or issue any new hospice licenses, except renewals; however, the department shall process applications for new hospice licenses filed during the period from and including March 27, 2017, through and until July 1, 2017, and shall issue no more than five (5) new hospice licenses in accordance with this chapter so long as the related applicant can show good cause for the issuance of the hospice license(s) for which application is made (including specifically, without limitation, the capability and capacity to provide unique or otherwise unavailable services related to serving patients under eighteen (18) years of age in the service area to which such application relates). If the applicant at the time of filing holds one or more hospice licenses, the applicant must be in good standing with the department regarding those licenses. Not more than two (2) of the new hospice licenses issued under this subsection shall be issued to the same applicant. This subsection (3) shall stand repealed on July 1, 2022.

(4) The provisions of subsection (3) prohibiting the processing of any new applications for hospice licensure shall not be applicable to an application for license reinstatement by a hospice whose license was temporarily suspended as a result of a federal audit by the U.S. Department of Health and Human Services, Office of Inspector General (HHS-OIG), and the audit has been concluded without any penalty imposed by the federal agency.

HISTORY:

Laws, 1995, ch. 325, § 4; Laws, 1998, ch. 433, § 7; Laws, 2007, ch. 469, § 1; Laws, 2008, ch. 498, § 1; Laws, 2008, ch. 518, § 1; Laws, 2011, ch. 444, § 1; Laws, 2013, ch. 553, § 1; Laws, 2015, ch. 426, § 1; Laws, 2016, ch. 510, § 26; Laws, 2017, ch. 396, § 1, eff from and after passage (approved Mar. 27, 2017).

Joint Legislative Committee Note —

Section 1 of ch. 498, Laws of 2008, effective from and after July 1, 2008 (approved April 21, 2008), amended this section. Section 1 of ch. 518, Laws of 2008, effective from and after July 1, 2008 (approved May 8, 2008), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 518, Laws of 2008, which contains language that specifically provides that it supersedes § 41-85-7 as amended by Laws of 2008, ch. 498.

Editor's Notes —

Laws of 2016, ch. 510, § 65 provides:

"SECTION 65. This act shall stand repealed on July 1, 2020."

Amendment Notes —

The 2017 amendment, effective March 27, 2017, rewrote (3), which read: "The State Department of Health shall not process any new applications for hospice licensure or issue any new hospice licenses, except renewals, unless the application for a new hospice license was pending with the department on March 1, 2013. This subsection (3) shall stand repealed on July 1, 2018"; and added (4).

§ 41-85-9. Inspections and investigations.

Any duly authorized officer or employee of the department shall have the right to make such inspections and investigations as are necessary in order to determine the state of compliance with the provisions of this chapter and of rules or standards in force pursuant hereto. The right of inspection shall also extend to any program which the department has reason to believe is offering or advertising itself as a hospice without a license, but no inspection of any such program may be made without the permission of the owner or person in charge thereof unless a warrant is first obtained authorizing such inspection. Any application for a license or renewal thereof made pursuant to this chapter shall constitute permission for any inspection of the hospice for which the license is sought in order to facilitate verification of the information submitted on or in connection with the application.

HISTORY:
Laws, 1995, ch. 325, § 5, eff from and after July 1, 1995.

§ 41-85-11. Application for license; plan for delivery of hospice care; duration of license; renewal of license; conditional license.

(1) An application shall be filed on a form prescribed by the department and shall be accompanied by the appropriate license fee as well as satisfactory proof that the hospice is in compliance with this chapter and any rules and minimum standards promulgated hereunder and proof of financial ability to operate and conduct the hospice in accordance with the requirements of this chapter. The initial application shall be accompanied by a plan for the delivery of home, outpatient and inpatient hospice care to terminally ill persons and their families. Such plan shall contain, but not be limited to:

(a) The estimated average number of terminally ill persons to be served monthly;

(b) The geographic area in which hospice services will be available;

(c) A listing of services which are or will be provided, either directly by the applicant or through contractual arrangements with existing providers;

(d) Provisions for the implementation of hospice home care within three (3) months of licensure;

(e) Provisions for the implementation of hospice outpatient and home-like inpatient care within twelve (12) months of licensure;

(f) The qualifications of any existing or potential contractee;

(g) The projected annual operating cost of the hospice; and

(h) A statement of financial resources and personnel available to the applicant to deliver hospice care. If the applicant is an existing health-care provider, the application shall be accompanied by a copy of the most recent profit-loss statement and, if applicable, the most recent licensure inspection report.

(2) A license issued for the operation of a hospice program, unless sooner suspended or revoked, shall expire automatically one (1) year from the date of issuance. Sixty (60) days prior to the expiration date, an application for renewal shall be submitted to the department on forms furnished by the department; and the license shall be renewed if the applicant has first met the requirements established under this chapter and all rules promulgated hereunder and has provided the information described in subsection (1) in addition

to the application. However, the application for license renewal shall be accompanied by an update of the plan for delivery of hospice care only if information contained in the plan submitted pursuant to subsection (1) is no longer applicable.

(3) A hospice program against which a revocation or suspension proceeding is pending at the time of license renewal may be issued a conditional license effective until final disposition by the department of such proceeding. If judicial relief is sought from the final disposition, the court having jurisdiction may issue a conditional permit for the duration of the judicial proceeding.

HISTORY:
Laws, 1995, ch. 325, § 6, eff from and after July 1, 1995.

RESEARCH REFERENCES

Am. Jur.
40A Am. Jur. 2d, Hospitals and Asylums §§ 5, 6.

§ 41-85-13. Denial, revocation or suspension of license.

(1) The department may deny, revoke or suspend a license.

(2) Any of the following actions by a hospice program or any of its employees shall be grounds for action by the department against a hospice program:

(a) A violation of the provisions of this chapter or of any standard or rule promulgated hereunder.

(b) An intentional or negligent act materially affecting the health or safety of a patient.

(3) If, three (3) months after the date of obtaining a license, or at any time thereafter, a hospice does not have in operation the home-care component of hospice care, the department shall immediately revoke the license of such hospice.

(4) If, twelve (12) months after the date of obtaining a license, or at any time thereafter, a hospice does not have in operation the outpatient and homelike inpatient components of hospice care, the department shall immediately revoke the license of such hospice.

HISTORY:
Laws, 1995, ch. 325, § 7, eff from and after July 1, 1995.

RESEARCH REFERENCES

Am. Jur.
40A Am. Jur. 2d, Hospitals and Asylums §§ 5, 6.

§ 41-85-15. Coordination with other providers by hospices; contractual arrangements for provision of hospice care; administration and elements of hospice care generally.

(1) A hospice care program shall coordinate its services with those of the patient's primary or attending physicians.

(2) A hospice shall coordinate its services with professional and nonprofessional services already in the community. A hospice program may contract out for some elements of its services for a patient and family; however, direct patient care must be maintained with the patient and the hospice care team so that overall coordination of services, which is responsive and appropriate to the patient and family needs, can be maintained by the hospice care team. A majority of hospice services available through an individual hospice shall be provided directly by the licensee. Any contract entered into between a hospice and a health-care facility or service provider shall specify that the hospice retain the responsibility for planning, coordinating and prescribing hospice services and care on behalf of a hospice patient and his family. No hospice which contracts for any hospice service may charge fees for services provided directly by the hospice care team which are duplicative of contractual services provided to the individual patient or his family.

(3) With respect to contractual arrangements for inpatient hospice care:

(a) The aggregate number of inpatient days provided by a hospice through all contractual arrangements between the hospice and licensed health-care facilities providing inpatient hospice care may not exceed twenty percent (20%) of the aggregate total number of days of hospice care provided to all patients receiving hospice care from the hospice during a twelve-month period. However, the provisions of this paragraph (a) shall not apply to a hospice facility providing inpatient continue care.

(b) The designation of a specific room or rooms for inpatient hospice care shall not be required if beds are available through contract between an existing health-care facility and a hospice.

(c) Licensed beds designated for inpatient hospice care through contract between an existing health-care facility and a hospice shall not be required to be delicensed from one type of bed in order to enter into a contract with a hospice, nor shall the physical plant of any facility be required to be altered, except that a homelike atmosphere may be required.

(d) Staffing standards for inpatient hospice care provided through a contract may not exceed the staffing standards required under the license held by the contractee.

(e) Under no circumstance may a hospice contract for the use of a licensed bed in a health-care facility or another hospice that has, or has had within the last eighteen (18) months, a suspended, revoked or conditional license, accreditation or rating.

(4) A hospice care team shall be responsible for inpatient, outpatient and home-care aspects of care.

(5) Any inpatient component of care shall be under the direct administration of the hospice program.

(6) Hospice care shall provide symptom control provided by a hospice care team skilled in medical and psychosocial management of distressing signs and symptoms.

(7) The hospice shall have a medical director, who shall have responsibility for medical direction of the care and treatment of patients and their families rendered by the hospice care teams.

(8) Hospice care will be available twenty-four (24) hours a day, seven (7) days a week.

(9) A hospice program shall have a bereavement program which shall provide a continuum of supportive and therapeutic services for the family, including formal and informal individual, family and group treatment modalities used as needed to support the bereaved family.

(10) A hospice program shall foster independence of the patient and his family by providing training, encouragement and support so that the patient and family can care for themselves as much as possible.

(11) The unit of care in a hospice program shall be the patient and family.

(12) A hospice program will provide a continuum of care and a continuity of care givers throughout the length of care for the patient and to the family through the bereavement period.

(13) A hospice program of care shall not impose the dictates of any value or belief system on its patients and their families.

(14) Admission to a hospice program shall be made by a licensed physician and shall be dependent on the expressed request and informed consent of the patient and family.

(15) Accurate and current records shall be kept on all patients and their families.

(16) A registered nurse shall be employed full time by the hospice as a patient care coordinator to supervise and coordinate the palliative and supportive care for patients and families provided by a hospice care team. No other full-time personnel are required.

HISTORY:

Laws, 1995, ch. 325, § 8, eff from and after July 1, 1995.

Cross References —

Inpatient continue care component of hospice care, see § 41-85-17.

§ 41-85-17. Components or modes of hospice programs.

Each hospice program shall consist of at least three (3) of the four (4) components or modes of care described in this section which afford the terminally ill individual and the family of the terminally ill individual a range of service delivery which can be tailored to specific needs and preferences of the patient and family at any point in time. These four (4) components are:

(a) Hospice home care. This form of delivery of services shall be the primary form of care except for facilities providing inpatient care. The services of the hospice home care program shall be of the highest quality and shall be provided by the interdisciplinary, interactive qualified hospice team members.

(b) Inpatient hospice care. The inpatient component of care, when contracted for through an institution which is not a hospice providing inpatient continue care, is an adjunct to hospice home care and shall primarily be used only for short-term stays. The facility or rooms within a facility used for the hospice inpatient component of care shall be arranged, administered and managed in such a manner to provide privacy, dignity, comfort, warmth and safety for the terminally ill patient and the family. Every possible accommodation shall be made to create as homelike an atmosphere as practicable. To facilitate overnight family visitation within the facility, rooms shall be limited to no more than double occupancy; and, whenever possible, both occupants shall be hospice patients. There shall be a continuum of care and a continuity of care givers between the hospice home program and the inpatient aspect of care to the extent practicable and compatible with the preferences of the patient and his family. The hours for daily operation and the location of the place where the services are provided shall be determined, to the extent practicable, by the accessibility of such services to the patients and families served by the hospice program.

(c) Outpatient hospice care. The hospice outpatient service shall meet the same standards of quality as applied to inpatient care and hospice home care, considering the inherent differences between inpatients and outpatients with respect to their needs and modes of treatment. The hours for daily operation and the location of the place where the services are provided shall be determined, to the extent practicable, by the accessibility of such services to the patients and families served by the hospice program.

(d) Inpatient continue care. The inpatient continue care component of hospice care may be provided directly by the hospice. The facility used for the hospice inpatient continue care shall be arranged, administered and managed in such a manner to provide privacy, dignity, comfort, warmth and safety for the terminally ill patient and the family. Every possible accommodation shall be made to create as homelike an atmosphere as practicable. To facilitate overnight family visitation within the facility, rooms shall be limited to no more than double occupancy. The hospice shall be in operation twenty-four (24) hours a day and must provide hospice home care, inpatient hospice care, and outpatient care.

HISTORY:
Laws, 1995, ch. 325, § 9, eff from and after July 1, 1995.

§ 41-85-19. Government and administration of hospice program.

(1) A hospice program shall have a clearly defined organized governing body that has autonomous authority for the conduct of the hospice program. This body is not required to meet more often than quarterly.

(2) The hospice program shall have a director, administrator or manager who shall be responsible for the overall coordination and administration of the hospice program.

HISTORY:
Laws, 1995, ch. 325, § 10; Laws, 2009, ch. 365, § 1, eff from and after July 1, 2009.

RESEARCH REFERENCES

Am. Jur.
40A Am. Jur. 2d, Hospitals and Asylums §§ 13 et seq.

§ 41-85-21. Recordkeeping requirements.

An up-to-date, interdisciplinary record of care being given and patient and family status shall be kept. Records shall contain pertinent past and current medical, nursing, social and other therapeutic information and such other information that is necessary for the safe and adequate care of the patient and the family. Notations regarding all aspects of care for the patient and family shall be made in the record. When services are terminated, the record shall show the date and reason for termination.

HISTORY:
Laws, 1995, ch. 325, § 11, eff from and after July 1, 1995.

§ 41-85-23. Disclosure of information received through hospice program.

Information received by persons employed by, or providing services to, a hospice or received by the licensing agency through reports or inspection shall be deemed privileged and confidential information and shall not be disclosed to any person other than the patient or the family without the written consent of that patient, the patient's guardian or the patient's family.

HISTORY:
Laws, 1995, ch. 325, § 12, eff from and after July 1, 1995.

§ 41-85-25. Advertisement of hospice program; penalties.

(1) It is unlawful for any person or public body to offer or advertise to the public in any way by any medium whatever to be a hospice as defined in this chapter without obtaining a valid current license. It is unlawful for any holder of a license issued pursuant to the provisions of this chapter to advertise or hold out to the public that it holds a license for a hospice program other than that for which it actually holds a license.

(2) Any person found guilty of violating subsection (1) is guilty of a misdemeanor, punishable, upon conviction, by a fine of not more than Ten Thousand Dollars ($10,000.00) or by imprisonment in the county jail for not greater than six (6) months, or both. Each day of a continuing violation shall be considered a separate offense.

HISTORY:

Laws, 1995, ch. 325, § 13, eff from and after July 1, 1995.

Cross References —

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 86.

MISSISSIPPI CHILDREN'S HEALTH CARE INSURANCE PROGRAM ACT

Sec.

41-86-1.	Short title.
41-86-3.	Repealed.
41-86-5.	Definitions.
41-86-7.	Establishment of insurance program; funding.
41-86-9.	Transfer of health insurance program from State and School Employees Health Insurance Management Board to the Division of Medicaid.
41-86-11.	Implementation of program by Division of Medicaid; reports; contracting.
41-86-13.	Funding; source; effect on program.
41-86-15.	Eligibility for benefits.
41-86-17 through 41-86-21.	Repealed.

§ 41-86-1. Short title.

This chapter shall be known as and may be cited as the Mississippi Children's Health Insurance Program Act.

HISTORY:

Laws, 1998, ch. 572, § 1; reenacted without change, Laws, 2001, ch. 532, § 1; Laws, 2012, ch. 334, § 1, eff from and after Jan. 1, 2013.

§ 41-86-3. Repealed.

Repealed by § 8 of Chapter 334, Laws of 2012, effective January 1, 2013.

§ 41-86-3. [Laws, 1998, ch. 572, § 2; reenacted without change, Laws, 2001, ch. 532, § 2, eff from and after June 30, 2001.]

Editor's Notes —

Former § 41-86-3 established a temporary statewide program for children's health insurance under Title XXI of the Social Security Act to provide child health-care assistance to targeted, uninsured, low-income children to be administered by the Division of Medicaid in the Office of the Governor.

§ 41-86-5. Definitions.

As used in this chapter, the following definitions shall have the meanings ascribed in this section, unless the context indicates otherwise:

(a) "Child" means an individual who is under nineteen (19) years of age who is not eligible for Medicaid benefits and is not covered by other health insurance.

(b) "Covered benefits" means the types of health care benefits and services provided to eligible recipients under the program.

(c) "Division" means the Division of Medicaid in the Office of the Governor.

(d) "Low-income child" means a child whose family income does not exceed two hundred percent (200%) of the poverty level for a family of the size involved.

(e) "Plan" means the State Child Health Plan.

(f) "Program" means the Mississippi Children's Health Insurance Program established by this chapter.

(g) "Recipient" means a person who is eligible for assistance under the program.

(h) "State Child Health Plan" means the permanent plan that sets forth the manner and means by which the State of Mississippi will provide health care assistance to eligible uninsured, low-income children consistent with the provisions of Title XXI of the federal Social Security Act, as amended.

HISTORY:

Laws, 1998, ch. 572, § 3; Laws, 1999, ch. 546, § 1; reenacted without change, Laws, 2001, ch. 532, § 3; Laws, 2012, ch. 334, § 2, eff from and after Jan. 1, 2013.

Federal Aspects—

Title XXI of the Social Security Act, State Children's Health Insurance Program, see 42 USCS §§ 1397aa et seq.

§ 41-86-7. Establishment of insurance program; funding.

There is established a Children's Health Insurance Program in Mississippi, which shall be financed by state appropriations and federal matching funds received by the state under the Children's Health Insurance Program established by Title XXI of the federal Social Security Act, as amended.

HISTORY:

Laws, 1998, ch. 572, § 4; reenacted without change, Laws, 2001, ch. 532, § 4; Laws, 2012, ch. 334, § 3, eff from and after Jan. 1, 2013.

§ 41-86-9. Transfer of health insurance program from State and School Employees Health Insurance Management Board to the Division of Medicaid.

On January 1, 2013, the Mississippi Children's Health Insurance Program and the current contract for insurance services shall be transferred from the State and School Employees Health Insurance Management Board to the Division of Medicaid, and the division shall be responsible for the implementation and administration of the Mississippi Children's Health Insurance Program in accordance with federal law and regulations and this chapter from and after January 1, 2013. The Health Insurance Management Board shall be responsible for any audit or claims processing issues for the period during which the board administered the program. Effective January 1, 2015, and notwithstanding any other provision of law to the contrary, the division is authorized to operate the program as described under Section 43-13-117(H).

HISTORY:

Laws, 1998, ch. 572, § 5; reenacted without change, Laws, 2001, ch. 532, § 5; Laws, 2012, ch. 334, § 4; Laws, 2014, ch. 488, § 6, eff from and after July 1, 2014.

Federal Aspects—

Title XXI of the Social Security Act, see §§ 42 USCS 1397aa et seq.

OPINIONS OF THE ATTORNEY GENERAL

The Dental Care Benefits Law (Section 83-51-1 et seq.) is inapplicable to the Children's Health Insurance Program (CHIP), which is not under the jurisdiction of the Department of

Insurance, but was, pursuant to Section 41-86-9, developed by the Children's Health Insurance Program Commission; thus, the School Employees Health Insurance Management Board (HIMB) is not prohibited from requiring that dentists meet certain minimum requirements in order to receive reimbursement for services rendered to children under CHIP, nor is HIMB prohibited from requiring that dentists participate in a provider network in order to receive reimbursement for services rendered to children under CHIP. Anderson and 2002 Miss. Op. Att'y Gen. 433.

§ 41-86-11. Implementation of program by Division of Medicaid; reports; contracting.

(1) The division shall adopt, in accordance with Section 25-43-1.101 et seq., rules and regulations for the implementation of the program, and for the coordination of the program with the state's other medical assistance programs.

(2) The division shall have all of the authority set forth in Section 43-13-101 et seq. in administering the program.

(3) The division shall make reports to the federal government and to the Legislature on the providing of benefits to those children under the program.

(4) The division shall execute a contract or contracts to provide the health care coverage and services under the program in a manner that is consistent with all federal and state procurement regulations.

HISTORY:

Laws, 1998, ch. 572, § 6; reenacted without change, Laws, 2001, ch. 532, § 6; Laws, 2012, ch. 334, § 5, eff from and after Jan. 1, 2013.

§ 41-86-13. Funding; source; effect on program.

(1) The division shall receive state appropriations for the program and federal matching funds under the Children's Health Insurance Program established by Title XXI of the federal Social Security Act, as amended, for the administration of the program. The Legislature shall include those funds as a line item in the appropriation to the division.

(2) The program is subject to the availability of state funds specifically appropriated by the Legislature for the purpose of the program and federal matching funds under the Children's Health Insurance Program established by Title XXI of the federal Social Security Act, as amended. The division may limit enrollment as necessary to ensure that the costs of the program do not exceed the total amount of state and federal funds appropriated by the Legislature for that purpose.

HISTORY:

Laws, 1998, ch. 572, § 7; reenacted without change, Laws, 2001, ch. 532, § 7; Laws, 2012, ch. 334, § 6, eff from and after Jan. 1, 2013.

Federal Aspects—

Title XXI of the Social Security Act, State Children's Health Insurance Program, see 42 USCS §§ 1397aa et seq.

§ 41-86-15. Eligibility for benefits.

Persons eligible to receive covered benefits under this chapter shall be low-income children who meet the eligibility standards set forth in the State Child Health Plan. Any person who is eligible for benefits under the Mississippi Medicaid Law, Section 43-13-101 et seq., shall not be eligible to receive benefits under this chapter. A person who is without insurance coverage at the time of application for the program and who meets the other eligibility criteria in the plan shall be eligible to receive covered benefits under the program.

HISTORY:

Laws, 1998, ch. 572, § 8; Laws, 2000, ch. 625, § 1; reenacted and amended, Laws, 2001, ch. 532, § 8; Laws, 2003, ch. 543, § 8; Laws, 2012, ch. 334, § 7, eff from and after Jan. 1, 2013.

§§ 41-86-17 through 41-86-21. Repealed.

Repealed by § 8 of Chapter 334, Laws of 2012, effective January 1, 2013.

§ 41-86-17. [Laws, 1998, ch. 572, § 9; reenacted and amended, Laws, 2001, ch. 532, § 9, eff from and after June 30, 2001.]

§ 41-86-19. [Laws, 1999, ch. 546, § 2; Laws, 2000, ch. 625, § 2, eff from and after passage (approved May 23, 2000.]

§ 41-86-21. [Laws, 1999, ch. 546, § 3, eff from and after passage (approved Apr. 21, 1999.)]

Editor's Notes —

Former § 41-86-17 specified the covered benefits and services to be provided under the Children's Health Insurance Program and deductibles or other cost-sharing requirements.

Former § 41-86-19 required the Division of Medicaid to develop a Children's Health Insurance Program enrollment outreach initiative in cooperation with certain state agencies, community health centers, the Mississippi State Medical Association, the Mississippi State Hospital Association, other health provider associations and community action agencies/Headstart centers..

Former § 41-86-21 established a Children's Health Insurance Program advisory board and joint legislative advisory committee.

CHAPTER 87.

EARLY INTERVENTION ACT FOR INFANTS AND TODDLERS

Sec.
41-87-1. Short title.
41-87-3. Legislative findings.
41-87-5. Definitions.
41-87-7. State Interagency Coordinating Council; membership; meetings; duties of council; conflict of interests.
41-87-9. Minimum components of statewide system of programs providing early intervention services; council to establish plan.
41-87-11. Responsibilities of lead agency; participating agencies to cooperate with lead agency and council.
41-87-12. Local interagency coordinating councils; duties; membership.
41-87-13. Services provided to infants and toddlers and their families upon implementation of early intervention plan; individualized family service plan to serve as comprehensive service plan for all agencies.
41-87-15. Additional federal and state funding to be used to supplement and increase existing funding.
41-87-17. Implementation of early intervention program.
41-87-19. Review of budgets and policies of participating agencies; financial responsibility.

Editor's Notes —

Laws of 1990, ch 554, § 10, provided for the automatic repeal of this chapter effective from and after June 30, 1994. Subsequently, Laws of 1994, ch. 379, § 1, amended Laws of 1990, ch. 554, § 10, to delete the automatic repealer.

§ 41-87-1. Short title.

This chapter shall be known and may be cited as the Early Intervention Act for Infants and Toddlers.

HISTORY:

Laws, 1990, ch. 554, § 1, eff from and after July 1, 1990.

§ 41-87-3. Legislative findings.

The Legislature finds that there is an urgent and substantial need to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services, which is family centered and community based, for all eligible infants and toddlers and their families.

HISTORY:

Laws, 1990, ch. 554, § 2; Laws, 1993, ch. 424, § 1, eff from and after July 1, 1993.

§ 41-87-5. Definitions.

Unless the context requires otherwise, the following definitions in this section apply throughout this chapter:

(a) "Eligible infants and toddlers" or "eligible children" means children from birth through thirty-six (36) months of age who need early intervention services because they:

(i) Are experiencing developmental delays as measured by appropriate diagnostic instruments and procedures in one or more of the following areas:

(A) Cognitive development;

(B) Physical development, including vision or hearing;

(C) Communication development;

(D) Social or emotional development;

(E) Adaptive development;

(ii) Have a diagnosed physical or mental condition, as defined in state policy, that has a high probability of resulting in developmental delay;

(iii) Are at risk of having substantial developmental delays if early intervention services are not provided due to conditions as defined in state policy. (This category may be served at the discretion of the lead agency contingent upon available resources.)

(b) "Early intervention services" are developmental services that:

(i) Are provided under public supervision;

(ii) Are provided at no cost except where federal or state law provides for a system of payments by families, including a schedule of sliding fees;

(iii) Are designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas:

(A) Physical development;

(B) Cognitive development;

(C) Communication development;

(D) Social or emotional development; or

(E) Adaptive development;

(iv) Meet the requirements of Part C of the Individuals with Disabilities Education Act (IDEA) and the early intervention standards of the State of Mississippi;

(v) Include, but are not limited to, the following services:

(A) Assistive technology devices and assistive technology services;

(B) Audiology;

(C) Family training, counseling and home visits;

(D) Health services necessary to enable a child to benefit from other early intervention services;

(E) Medical services only for diagnostic or evaluation purposes;

(F) Nutrition services;

(G) Occupational therapy;

(H) Physical therapy;

(I) Psychological services;

(J) Service coordination (case management);

(K) Social work services;

(L) Special instruction;

(M) Speech-language pathology;

(N) Transportation and related costs that are necessary to enable an infant or toddler and her/his family to receive early intervention services; and

(O) Vision services;

(vi) Are provided by qualified personnel as determined by the state's personnel standards, including:

(A) Audiologists;
(B) Family therapists;
(C) Nurses;
(D) Nutritionists;
(E) Occupational therapists;
(F) Orientation and mobility specialists;
(G) Pediatricians and other physicians;
(H) Physical therapists;
(I) Psychologists;
(J) Social workers;
(K) Special educators;
(L) Speech and language pathologists;

(vii) Are provided, to the maximum extent appropriate, in natural environments, including the home, and community settings in which children without disabilities would participate;

(viii) Are provided in conformity with an individualized family service plan.

(c) "Council" means the State Interagency Coordinating Council established under Section 41-87-7.

(d) "Lead agency" means the State Department of Health.

(e) "Participating agencies" includes, but is not limited to, the State Department of Education, the Department of Human Services, the State Department of Health, the Division of Medicaid, the State Department of Mental Health, the University Medical Center, the Board of Trustees of State Institutions of Higher Learning and the Mississippi Community College Board.

(f) "Local community" means a county either jointly, severally, or a portion thereof, participating in the provision of early intervention services.

(g) "Primary service agency" means the agency, whether a state agency, local agency, local interagency council or service provider which is designated by the lead agency to serve as the fiscal and contracting agent for a local community.

(h) "Multidisciplinary team" means a group comprised of the parent(s) or legal guardian and the service providers, as appropriate, described in paragraph (b) of this section, who are assembled for the purposes of:

(i) Assessing the developmental needs of an infant or toddler;

(ii) Developing the individualized family service plan; and

(iii) Providing the infant or toddler and his or her family with the appropriate early intervention services as detailed in the individualized family service plan.

(i) "Individualized family service plan" means a written plan designed to address the needs of the infant or toddler and his or her family as specified under Section 41-87-13.

(j) "Early intervention standards" means those standards established by any agency or agencies statutorily designated the responsibility to establish standards for infants and toddlers with disabilities, in coordination with the council and in accordance with Part C of IDEA.

(k) "Early intervention system" means the total collaborative effort in the state that is directed at meeting the needs of eligible children and their families.

(*l*) "Parent," for the purpose of early intervention services, means a parent, a guardian, a person acting as a parent of a child, foster parent, or an appointed surrogate parent. The term does not include the state if the child is a ward of the state where the child has not been placed with individuals to serve in a parenting capacity, such as foster parents, or when a surrogate parent has not been appointed. When a child is the ward of the state, a Department of Human Services representative will act as parent for purposes of service authorization.

(m) "Policies" means the state statutes, regulations, Governor's orders, directives by the lead agency, or other written documents that represent the state's position concerning any matter covered under this chapter.

(n) "Regulations" means the United States Department of Education's regulations concerning the governance and implementation of Part C of IDEA, the Early Intervention Program for Infants and Toddlers with Disabilities.

HISTORY:

Laws, 1990, ch. 554, § 3; Laws, 1993, ch. 424, § 2; Laws, 2001, ch. 392, § 1; Laws, 2014, ch. 397, § 57, eff from and after July 1, 2014.

Editor's Notes —

Section 43-26-1, enacted by Chapter 494, Laws of 2016, effective May 13, 2016, provides that from and after July 1, 2018, the programs and services provided by the Office of Family and Children's Services of the Department of Human Services under this section will be provided by the Department of Child Protection Services.

Cross References —

State Department of Education, see § 37-3-1 et seq.

Mississippi Community College Board, see § 37-4-3.

Department of Human Services, see § 37-33-151 et seq.

Section 37-4-5 provides that the terms "Junior College Commission" and "State Board for Community and Junior Colleges," wherever they appear in the laws of Mississippi, shall mean the "Mississippi Community College Board."

Board of Trustees of State Institutions of Higher Learning, see § 37-101-1.

University Medical Center, see § 37-115-21 et seq.

State Department of Mental Health, see § 41-4-5 et seq.

Division of Medicaid, see § 43-13-107 et seq.

Federal Aspects—

Individuals with Disabilities Act (IDEA), see 20 USCS §§ 1400 et seq.

§ 41-87-7. State Interagency Coordinating Council; membership; meetings; duties of council; conflict of interests.

(1) For the purposes of implementing this chapter, the Governor shall appoint a State Interagency Coordinating Council.

(2) The council shall be appointed by the Governor. In making the

appointments to the council, the Governor shall ensure that the membership of the council reasonably represents the population of the state.

(a) The Governor shall designate a member of the council to serve as the chairperson of the council or shall require the council to so designate such a member. Any member of the council who is a representative of the lead agency may not serve as the chairperson of the council.

(b) The council shall be composed as follows:

(i) At least twenty percent (20%) of the members shall be parents, including minority parents, of infants or toddlers with disabilities or children with disabilities aged twelve (12) or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. At least one (1) such member shall be a parent of an infant or toddler with a disability or a child with a disability aged six (6) or younger. Parental representatives shall not be employees of any agency or organization which provides early intervention services;

(ii) At least twenty percent (20%) of the members shall be public or private providers of early intervention services;

(iii) At least one (1) member shall be from the State Legislature;

(iv) At least one (1) member shall be involved in personnel preparation;

(v) At least one (1) member shall be from each of the state agencies involved in the provision of or payment for early intervention services to infants and toddlers with disabilities and their families and shall have sufficient authority to engage in policy planning and implementation on behalf of such agencies;

(vi) At least one (1) member shall be from the state educational agency responsible for preschool services to children with disabilities and shall have sufficient authority to engage in policy planning and implementation on behalf of such agency;

(vii) At least one (1) member shall be from the agency responsible for the state governance of insurance, especially in the area of health insurance;

(viii) At least one (1) member must be from a Head Start agency or program in the state;

(ix) At least one (1) member must be from a state agency responsible for child care;

(x) The council may include other members selected by the Governor, including a representative from the Bureau of Indian Affairs (BIA), or where there is no BIA operated or funded school, from the Indian Health Service or the tribe/tribal council.

(3) The council shall meet at least quarterly in such places as it deems necessary. The meetings shall be publicly announced, and to the extent appropriate, open and accessible to the general public.

(4) The council may prepare and approve a budget using Part C funds to conduct hearings and forums, to reimburse members of the council for reasonable and necessary expenses for attending council meetings and per-

forming council duties (including child care for parent representatives), to pay compensation to a member of the council if such member is not employed or must forfeit wages from other employment when performing official council business, to hire staff, and to obtain the services of such professional, technical and clerical personnel as may be necessary to carry out its functions under this chapter.

(5) The council shall:

(a) Advise and assist the lead agency in the performance of its responsibilities, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility by the appropriate agency, and the promotion of the interagency agreements;

(b) Advise and assist the lead agency in the preparation of applications for funding under Part C of Public Law 102-119;

(c) Prepare and submit an annual report to the Governor and to the United States Secretary of Education on the status of early intervention programs for eligible infants and toddlers and their families operated within the state;

(d) Advise and assist the lead agency in the development and implementation of the policies that constitute the statewide system;

(e) Assist the lead agency in achieving the full participation, coordination and cooperation of all appropriate public agencies in the state;

(f) Assist the lead agency in the effective implementation of the statewide system, by establishing a process that includes:

(i) Seeking information from service providers, service coordinators, parents and others about any federal, state or local policies that impede timely service delivery; and

(ii) Taking steps to ensure that any policy problems are identified and resolved;

(g) To the extent appropriate, assist the lead agency in the resolution of disputes;

(h) Advise and assist the state educational agency regarding the transition of toddlers with disabilities to services provided under Section 619 of Part B of Public Law 105-17, to the extent such services are appropriate; and

(i) Perform other functions as defined in the regulations.

(6) The council may advise and assist the lead agency and the state educational agency regarding the provision of appropriate services for children aged birth to five (5), inclusive.

(7) No member of the council shall cast a vote on any matter which would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under state law.

HISTORY:

Laws, 1990, ch. 554, § 4; Laws, 1993, ch. 424, § 3; Laws, 2001, ch. 392, § 2, eff from and after July 1, 2001.

Cross References —

Definition of lead agency and participating agencies, see § 41-87-5.

Definition of "Council", see § 41-87-5.

Federal Aspects—
Public Law 102-119 and Public Law 105-17 are codified in various sections of Title 20, Chapter 33 (20 USCS §§ 1400 et seq).

§ 41-87-9. Minimum components of statewide system of programs providing early intervention services; council to establish plan.

(1) A statewide system of coordinated, comprehensive, multidisciplinary, interagency programs providing appropriate early intervention services to all eligible infants and toddlers and their families, including eligible Indian infants and toddlers and their families on reservations, shall include the following minimum components:

(a) Eligibility criteria and procedures including a definition of the term "developmentally delayed" that will be used by the state in carrying out programs under this chapter;

(b) Timetables for ensuring that appropriate early intervention services will be available to all eligible children in the state, including Indian infants and toddlers on reservations;

(c) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant and toddler with a disability in the state, and a family-directed assessment of the resources, priorities and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler with a disability;

(d) For each eligible child, an individualized family service plan including service coordination (case management) services in accordance with such service plan. The individualized family services plan shall be in writing, done in accordance with Part C regulations, and contain a statement of the natural environments in which early intervention services shall appropriately be provided, as well as all components listed in the Part C regulations;

(e) A comprehensive interagency child find system that includes a system for making referrals to service providers that includes timelines and provides for participation by primary referral sources;

(f) A public awareness program focusing on early identification of infants and toddlers with disabilities, including preparation and dissemination by the lead agency to all primary referral sources of information materials for parents on the availability of early intervention services, and procedures for determining the extent to which primary referral sources, especially hospitals and physicians, disseminate information on the availability of early intervention services to parents of infants with disabilities;

(g) A central directory which includes early intervention services, resources and experts available in the state and research and demonstration projects being conducted in the state;

(h) A comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources respecting the basic components of early intervention services available in the state, that is consistent with the comprehensive system of personnel development described in Part B of IDEA and that may include:

(i) Implementing innovative strategies and activities for the recruitment and retention of early intervention service providers;

(ii) Promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this chapter;

(iii) Training personnel to work in rural areas; and

(iv) Training personnel to coordinate transition services for infants and toddlers with disabilities from an early intervention program in the early intervention system to a preschool program under Section 619 of IDEA;

(i) A single line of responsibility in the lead agency for carrying out:

(i) The general administration and supervision of programs and activities receiving assistance under Part C of IDEA, and the monitoring of programs and activities used by the state to carry out this chapter, whether or not such programs or activities are receiving assistance made available under Part C, to ensure that the state complies with Part C;

(ii) The identification and coordination of all available resources within the state from federal, state, local and private sources;

(iii) The assignment of financial responsibility in accordance with state and federal law to the appropriate agencies;

(iv) The development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families in a timely manner pending the resolution of any disputes among public agencies or service providers;

(v) The resolution of intra- and interagency disputes; and

(vi) The entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with state law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination;

(j) A policy pertaining to contracting or making arrangements with service providers to provide early intervention services in the state as a part of the early intervention system in accordance with state law, state regulation and Part C of IDEA;

(k) A procedure for timely reimbursement of funds used in accordance with Section 41-87-15;

(*l*) Procedural safeguards with respect for programs participating in the early intervention system;

(m) Policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to implement the early intervention system are adequately and appropriately prepared and trained including:

(i) The establishment and maintenance of standards which are consistent with any state-approved or recognized certification, licensing, registration or other comparable requirements which apply to the area in which such personnel are providing early intervention services; and

(ii) To the extent such standards are not based on the highest requirements of the state applicable to a specific profession or discipline, the steps the state is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the state;

(n) A system for compiling data on the number of infants and toddlers with disabilities and their families in the state in need of appropriate early intervention services, the numbers of such infants and toddlers and their families served, the types of services provided, and other information required by the U.S. Secretary of Education, or state regulation.

HISTORY:

Laws, 1990, ch. 554, § 5; Laws, 1993, ch. 424, § 4; Laws, 2001, ch. 392, § 3, eff from and after July 1, 2001.

Cross References —

Definition of lead agency, see § 41-87-5.

Duty of Interagency Coordinating Council to coordinate development of statewide plan for services containing the components outlined in this section, see § 41-87-7.

Federal Aspects—

Individuals with Disabilities Act (IDEA), see 20 USCS §§ 1400 et seq.

§ 41-87-11. Responsibilities of lead agency; participating agencies to cooperate with lead agency and council.

(1) The lead agency shall have the following responsibilities in the implementation of this chapter:

(a) General administering and supervising programs and activities receiving Part C funds and the monitoring of programs and activities used by the state to carry out this chapter, whether or not such programs or activities are receiving Part C funds, to ensure that the state complies with this chapter;

(b) Identifying and coordinating all available financial resources within the state from federal, state, local and private sources;

(c) Developing procedures to ensure that services are provided to eligible children and their families in a timely manner pending the resolution of any disputes among public agencies or service providers;

(d) Ensuring effective implementation of procedural safeguards by each public agency in the state that is involved in the provision of early intervention services;

(e) Entering into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with other state laws) and procedures for resolving intra- and interagency disputes and that include all additional components necessary to ensure meaningful cooperation;

(f) Entering into contracts with agencies within a local community which have been designated by the lead agency as being a primary service agency within the community;

(g) Developing procedures to ensure that available services are provided to eligible children and their families in a timely manner, pending the resolution of disputes among public agencies or service providers;

(h) Resolving individual disputes in accordance with the regulations;

(i) Adopting and using proper methods of administering each program including:

(i) Monitoring of agencies, institutions and organizations receiving assistance under Part C of Public Law 102-119;

(ii) Enforcing of any obligations imposed on those agencies providing early intervention services according to Part C of Public Law 102-119 and the standards of the state;

(iii) Providing technical assistance to agencies in the program;

(iv) Correction of deficiencies that are identified through monitoring;

(j) Establishing state policies related to how services to children eligible under this chapter and their families will be paid for under the state's early intervention system in accordance with federal regulations;

(k) Development of policies, standards and regulations necessary for implementation of the state early intervention plan that are in compliance with the federal regulations; and

(*l*) Provision of technical assistance to localities in the establishment and operation of local interagency coordinating councils which may also be designated as primary service agencies for an area.

(2) All participating agencies shall cooperate with the lead agency and the council in the implementation of this chapter.

HISTORY:

Laws, 1990, ch. 554, § 6; Laws, 1993, ch. 424, § 5; Laws, 2001, ch. 392, § 4, eff from and after July 1, 2001.

Cross References —

Definitions of lead agency and participating agencies, see § 41-87-5.

Federal Aspects—

Public Law 102-119 is codified in various sections of Title 20, Chapter 33 (20 USCS §§ 1400 et seq).

§ 41-87-12. Local interagency coordinating councils; duties; membership.

(1) For the purposes of this chapter, the state council will recognize or facilitate the formation of district and local interagency councils to plan and coordinate services, in conjunction with the district office of the lead agency, for eligible infants and toddlers and their families who reside within the county or counties served by the councils. Local councils may enter into contractual agreements with the lead agency to become primary service agencies.

(2) The duties of local interagency coordinating councils shall include:

(a) Identifying existing early intervention services and resources;

(b) Identifying gaps in the service delivery system and developing strategies to address these gaps;

(c) Identifying alternative funding sources;

(d) Facilitating the development of interagency agreements and supporting the development of service coalitions;

(e) Assisting in the implementation of policies and procedures that will promote interagency collaboration;

(f) Developing local procedures and determining mechanisms for implementing policies and procedures in accordance with state and federal statutes and regulations;

(g) Developing a local interagency plan for the coordination of early intervention services to infants and toddlers with disabilities and their families;

(h) Collecting necessary and appropriate data on early intervention service provision in the area;

(i) Serving as the fiscal and or contracting agent for a local community for the provision of early intervention services, training or planning.

(3) Local interagency coordinating councils shall be composed of community members who are interested in supporting coordinated early intervention services, representatives of all local agencies serving infants and toddlers, medical professionals, public and private service providers, parents of persons with disabilities, community and business leaders and local agencies.

HISTORY:

Laws, 1993, ch. 424, § 6, eff from and after July 1, 1993.

§ 41-87-13. Services provided to infants and toddlers and their families upon implementation of early intervention plan; individualized family service plan to serve as comprehensive service plan for all agencies.

(1) Upon full implementation of the early intervention system, eligible infants and toddlers and their families shall receive the following, at no cost to the parents:

(a) A comprehensive multidisciplinary evaluation and assessment of the needs of the infant and toddler and the concerns, priorities and resources of the family, and the identification of services to meet such needs;

(b) An explanation of the assessment and all service options in the family's native language or through an interpreter for the deaf, if necessary, accommodating cultural differences;

(c) A written individualized family service plan developed according to the federal Part C regulations and the state guidelines and the recommendations by a multidisciplinary team with the parents as fully participating members of the team;

(d) Case management/service coordination services; and

(e) Procedural safeguards as outlined in state policy and according to the regulations.

(2) The individualized family service plan shall serve as the singular comprehensive service plan for all agencies involved in providing early intervention services to the infant or toddler and the family. Service plans from other agencies should be incorporated into the individualized family service plan on an individual basis.

(3) The contents of the individualized family service plan shall be fully explained to the parents or guardian, and informed written consent from such parents or guardian shall be obtained before the provision of early intervention

services described in such plan. If such parents or guardian do not provide consent with respect to a particular early intervention service, then the early intervention services to which such consent is obtained shall be provided.

HISTORY:
Laws, 1990, ch. 554, § 7; Laws, 1993, ch. 424, § 7; Laws, 2001, ch. 392, § 5, eff from and after July 1, 2001.

Cross References —
Application of this section to definition of "Individualized family service plan", see § 41-87-5.

§ 41-87-15. Additional federal and state funding to be used to supplement and increase existing funding.

Any federal funds made available to the state through Part C and any additional state funds appropriated for early intervention services after July 1, 1990, shall be used to supplement and increase the level of state, local and other federal funds that were expended for eligible children and their families before July 1, 1990. Funds provided under Part C may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source if Part C money did not exist, except that whenever necessary to prevent a delay in the receipt of appropriate early intervention services by the infant or toddler or family in a timely fashion, Part C funds may be used to pay the provider of the services pending reimbursement to the lead agency from the agency that has ultimate responsibility for the payment.

HISTORY:
Laws, 1990, ch. 554, § 8; Laws, 1993, ch. 424, § 8; Laws, 2001, ch. 392, § 6, eff from and after July 1, 2001.

§ 41-87-17. Implementation of early intervention program.

Full implementation of the early intervention system according to the timelines and objectives established by collaborative participating agencies is contingent upon adequate and continuing state and/or federal funding.

HISTORY:
Laws, 1990, ch. 554, § 9; Laws, 1993, ch. 424, § 9, eff from and after July 1, 1993.

§ 41-87-19. Review of budgets and policies of participating agencies; financial responsibility.

The lead agency shall review the proposed budgets and policies of the participating agencies as they effect implementation of the coordinated interagency early intervention system in the state. The State Legislature through its budgetary and appropriations process shall have final responsibility for assignment of financial responsibility in the state.

HISTORY:
Laws, 1993, ch. 424, § 10, eff from and after July 1, 1993.

CHAPTER 88.

MISSISSIPPI CHILD IMMUNIZATION ACT OF 1994

Sec.	
41-88-1.	Short title.
41-88-3.	Administration of child vaccination program by State Department of Health; duties; responsibilities.

§ 41-88-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Child Immunization Act of 1994."

HISTORY:
Laws, 1994, ch. 365, § 1, eff from and after passage (approved March 14, 1994).

§ 41-88-3. Administration of child vaccination program by State Department of Health; duties; responsibilities.

(1) The State Department of Health is responsible for assuring that all children in the state are appropriately immunized against vaccine-preventable diseases. In order to improve the state's immunization levels in children, the State Department of Health shall enhance current immunization activities and focus on children receiving all recommended immunizations by twenty-four (24) months of age. The immunizations shall be administered according to the recommendations of the national Advisory Committee on Immunization Practices (ACIP). The administration of vaccine shall not be delayed due to a reluctance of the health-care provider to administer multiple immunizations in a visit. The department shall improve parent compliance and provide more timely scheduling, recall and follow-up in order to achieve national and state immunization level goals.

(2) The State Department of Health shall establish a statewide childhood immunization registry to which all health-care providers will report the administration of childhood immunizations. The State Board of Health will promulgate rules and regulations needed to implement this section. The department shall make information regarding the immunization status of children in the registry available to the parents/guardians of the child, health-care providers and individuals or organizations that are required to report on the immunizations status of children in their care.

HISTORY:
Laws, 1994, ch. 365, § 2, eff from and after passage (approved March 14, 1994).

RESEARCH REFERENCES

ALR.
Power of court or other public agency to order medical treatment over parental religious objections for child whose life is not immediately threatened. 52 A.L.R.3d 1118.

Liability of manufacturer or seller for injury or death allegedly caused by failure to warn regarding danger in use of vaccine or prescription drug. 94 A.L.R.3d 748.

Products liability: pertussis vaccine manufacturers. 57 A.L.R.4th 911.

Liability of manufacturer of oral live polio (Sabin) vaccine for injury or death from its administration. 66 A.L.R.4th 83.

Am. Jur.

39 Am. Jur. 2d, Health §§ 19, 28.

CHAPTER 89.

INFANT MORTALITY REDUCTION

Infant Mortality Task Force. 41-89-1
Infant Mortality Reduction Collaborative. 41-89-21

INFANT MORTALITY TASK FORCE

Sec.
41-89-1. Repealed.
41-89-3. Repealed.
41-89-5. Duties of task force; recommendations.

§ 41-89-1. Repealed.

Repealed by its own terms by Laws, 2005, ch. 509, § 1, eff from and after July 1, 2006.

[Laws, 1992, ch. 558 § 1; Laws, 1995, ch. 444, § 1; Laws, 1997, ch. 438, § 1; Laws, 1999, ch. 356, § 1; Laws, 2000, ch. 454, § 1; Laws, 2001, ch. 489, § 1; Laws, 2004, ch. 413, § 1; Laws, 2005, ch. 509, § 1, eff from and after June 30, 2005.]

Editor's Notes —

Former § 41-89-1 related to the creation, purpose, composition, and appointment and terms of members of the Infant Mortality Task Force.

§ 41-89-3. Repealed.

Repealed by its own terms by Laws, 2005, ch. 509, § 2, eff from and after July 1, 2006.

[Laws, 1992, ch. 558 § 2; Laws, 1995, ch. 444, § 2; Laws, 1997, ch. 438, § 2; Laws, 1999, ch. 356, § 2; Laws, 2003, ch. 417, § 1; Laws, 2005, ch. 509, § 2, eff from and after June 30, 2005.]

Editor's Notes —

Former § 41-89-3 related to the Infant Mortality Task Force chairman, bylaws and rules, committees, assignment for administrative purposes, budget, payment of members' travel expenses, meetings, and study and report.

§ 41-89-5. Duties of task force; recommendations.

(1) The task force shall:

(a) Serve an advocacy and public awareness role with the general public regarding maternal and infant health issues;

(b) Conduct studies on maternal and infant health and related issues;

(c) Serve as the state's official liaison with the Southern Regional Project on Infant Mortality, a project of the Southern Governors' Association and the Southern Legislative Conference;

(d) Recommend to the Governor and the Legislature appropriate policies to reduce Mississippi's infant mortality and morbidity rates and to improve the status of maternal and infant health; and

(e) Report annually to the Governor and the Legislature regarding the progress made toward the goals outlined in subsection (1) of Section 41-89-1 and the actions taken with regard to recommendations previously made.

(2) In developing its recommendations, the task force may consult with experts and shall examine actions taken in other states and review the policy statement developed during the Southern Legislative Summit on Healthy Infants and Families sponsored by the Southern Regional Project on Infant Mortality.

HISTORY:

Laws, 1992, ch. 558 § 3, eff from and after passage (approved May 15, 1992).

Editor's Notes —

Laws of 1992, ch. 558, § 4, effective from and after passage (approved May 15, 1992), provides as follows:

"SECTION 4. Executive Order No. 679, issued October 24, 1991, shall have no force or effect from and after the passage of this act."

Sections 41-89-1 and 41-89-3, which created the Infant Mortality Task Force and provided for the composition, appointment and terms of members and the task force chairman, bylaws and rules, committees and budget, were repealed by their own terms by Sections 1 and 2 of Chapter 509, Laws of 2005, effective from and after July 1, 2006.

INFANT MORTALITY REDUCTION COLLABORATIVE

Sec.
41-89-21. Infant Mortality Reduction Collaborative created; membership; policy recommendations [Repealed effective July 1, 2020].

§ 41-89-21. Infant Mortality Reduction Collaborative created; membership; policy recommendations [Repealed effective July 1, 2020].

(1) There is created the Infant Mortality Reduction Collaborative, to be composed of eleven (11) members as follows:

(a) The Chairman of the House Medicaid Committee or the designee of the chairman;

(b) The Chairman of the Senate Public Health and Welfare Committee or the designee of the chairman;

(c) The State Health Officer or the designee of the health officer;

(d) The Director of the Division of Pharmacy of the State Department of Health;

(e) The Executive Director of the Division of Medicaid or the designee of the executive director;

(f) The Pharmacy Director of the Division of Medicaid;

(g) Two (2) licensed physicians who are certified in obstetrics and gynecology appointed by the State Health Officer;

(h) One (1) representative of the pharmaceutical industry appointed by the State Health Officer;

(i) One (1) representative of private insurance providers appointed by the Governor; and

(j) One (1) representative of the Blair E. Batson Hospital for Children appointed by the Vice Chancellor for Health Affairs of the University of Mississippi Medical Center.

(2) The State Health Officer shall be the chairman of the Infant Mortality Reduction Collaborative. The collaborative shall adopt bylaws and rules for its efficient operation, which may include designation of its organizational structure including other officers and committees, duties of officers and committees, a process for selecting officers, quorum requirements for committees, provisions for special or ad hoc committees, staff policies and other such procedures as may be necessary. The collaborative may establish committees responsible for conducting specific collaborative programs or activities.

(3) The Infant Mortality Reduction Collaborative shall be assigned to the State Department of Health for administrative purposes only, and the department shall designate staff to assist the collaborative.

(4) The Infant Mortality Reduction Collaborative shall meet and conduct business at least quarterly. All meetings of the collaborative and any committees of the collaborative shall be open to the public, with opportunities for public comment provided on a regular basis. Notice of all meetings shall be given as provided in the Open Meetings Act (Section 25-41-1 et seq.) and appropriate notice also shall be given to all persons so requesting of the date, time and place of each meeting.

(5) The Infant Mortality Reduction Collaborative may apply for and expend grants or other contributions for the purpose of promoting maternal and infant health in Mississippi.

(6) The Infant Mortality Reduction Collaborative shall annually make policy recommendations to the Legislature and recommendations for regulatory changes to state agencies on the following matters:

(a) Ensuring the availability, accessibility and affordability of a hormonal supplement that is used to prevent preterm deliveries in pregnant women;

(b) Ensuring access to preconception health care;

(c) Reducing the number of early elective deliveries; and

(d) The development of perinatal regions of care.

(7) In developing its recommendations, the collaborative may consult with experts and shall examine actions taken in other states.

(8) This section shall stand repealed on July 1, 2020.

HISTORY:

Laws, 2015, ch. 492, § 1; Laws, 2017, ch. 323, § 1, eff from and after July 1, 2017.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the section's subsection designators as enacted by § 1 of Chapter 492, Laws of 2015, and amended by § 1 of Chapter 323, Laws of 2017, by redesignating subsections (8) and (9) as (7) and (8). The Joint Committee ratified the correction at the August 15, 2017, meeting of the Committee.

Amendment Notes —

The 2017 amendment extended the date of the repealer for this section by substituting "July 1, 2020" for "July 1, 2017" in (8).

CHAPTER 90.

HEARING IMPAIRMENT OF INFANTS AND TODDLERS

Sec.	
41-90-1.	Screening of newborns for hearing impairment; notification of parents.
41-90-3.	Legislative findings.
41-90-5.	Program for registration of newborns suffering from impaired hearing; purpose.
41-90-7.	Appointment of advisory committee.
41-90-9.	Fiscal support for Department of Health.

§ 41-90-1. Screening of newborns for hearing impairment; notification of parents.

(1) The physician attending any newborn child in a hospital in this state, or the person attending any newborn child in a hospital in this state if the child is not attended by a physician, shall cause the child, if available, to be screened or evaluated to determine if the child has a potential hearing impairment, using methods and procedures prescribed by the State Department of Health. If it is determined by such screening or evaluation that a newborn child in a hospital in this state may have a hearing impairment, the physician or other person attending the child shall (a) refer the child for confirmatory testing, and (b) make reasonable efforts to promptly notify the child's parents or guardian that the child may have a hearing impairment and shall explain to them the potential effect of such impairment on the development of the child's speech and language skills.

(2) For the purposes of this section, the term "hearing impairment" means a dysfunction of the auditory system of any type or degree that is sufficient that it may interfere with the acquisition and development of speech and language skills with or without the use of sound amplification. No health-care provider shall be civilly liable for the failure to conduct such screening or evaluation.

HISTORY:

Laws, 1997, ch. 514, § 1; Laws, 2001, ch. 419, § 1, eff from and after July 1, 2001.

§ 41-90-3. Legislative findings.

Based on information from the American Academy of Pediatrics, the National Institutes of Health, American Academy of Audiology, American Speech-Language-Hearing Association, and others who have completed extensive research on early identification of children with hearing loss, the Legislature finds an urgent need to establish an early identification system and a comprehensive service delivery system of developmentally appropriate services for infants and toddlers with hearing impairments and their families.

HISTORY:

Laws, 1997, ch. 514, § 2; Laws, 2001, ch. 419, § 2, eff from and after July 1, 2001.

§ 41-90-5. Program for registration of newborns suffering from impaired hearing; purpose.

(1) There is established a program of early hearing detection and intervention for newborns, infants and toddlers in the State of Mississippi who have impaired hearing. It is the purpose of this early hearing detection and intervention program to:

(a) Identify such children near birth in order that they and their parents or caregivers may be assisted in obtaining education, training, medical, diagnostic and therapeutic services, and other assistance necessary to enable them to become productive citizens of the state;

(b) Provide the state with the information necessary to effectively plan and establish a comprehensive system of developmentally appropriate services for deaf and hearing impaired infants and toddlers; and

(c) Reduce the likelihood of secondary disabling conditions for such children.

(2) The State Department of Health, as "lead agency" for the implementation of Part C of the Individuals with Disabilities Education Act (IDEA) and in accordance with the provisions of the Early Intervention Act for Infants and Toddlers (Section 41-87-1 through Section 41-87-19), shall administer the early hearing detection and intervention program. The State Part C Coordinator is designated as the director of the early hearing detection and intervention program and is charged with its administration. The State Part C Coordinator may designate a staff person (or persons) to carry out the provisions of this section. All hospitals in the state and other providers of services that have established hearing screening procedures for infants and toddlers ages birth through two (2) shall report to the State Part C Coordinator the results of all screening procedures. All persons and providers in the state who perform a diagnostic hearing evaluation on an infant or toddler (birth through age 2 years) referred as a result of a newborn hearing screening failure, shall report the results of the diagnostic hearing evaluation to the State Part C Coordinator within two (2) business days after their completion. The aforementioned persons and providers shall also report to the State Part C Coordinator the results of all diagnostic hearing evaluations of infants and toddlers (birth through age 2 years), including appropriate personal and identifying information, when those results confirm the presence of a hearing impairment consistent with Section 41-90-1(2). The information compiled and maintained in the early hearing detection and intervention program shall be kept confidential in accordance with the applicable requirements and provisions of the Early Intervention Act for Infants and Toddlers (Section 41-87-1 through Section 41-87-19) and Part C of IDEA. Families of all identified children with hearing impairments will be provided information on the availability of services in the state for children with hearing impairments, including those provided in accordance with Part C of IDEA through the statewide infant and toddler early intervention system.

(3) The director of the early hearing detection and intervention program or his or her designee shall facilitate the reporting of infants and toddlers who

fail to pass hearing screening or follow-up diagnostic hearing evaluation by hospitals or any other person or provider of services, as provided in subsection (2) of this section. Reports may be submitted to the early hearing detection and intervention program through the use of prepaid envelopes, sending of facsimiles, or telephone via statewide toll free number, or by other designated electronic data transmission process. It is the purpose of this subsection to facilitate the reporting of infants and toddlers who may have impaired hearing. The reporting requirements shall be designed to be as simple as possible and easily completed by nonprofessional persons when necessary.

(4) The State Board of Health may adopt rules and regulations that the board considers necessary to implement this section with input from the advisory committee established in Section 41-90-7. The board in its rules and regulations may specify the types of information to be provided to the State Part C Coordinator for the early hearing detection and intervention program. The State Department of Health may:

(a) Execute contracts that the department deems necessary to carry out the provisions of this section;

(b) Obtain data from medical records for children suspected of having hearing impairments that are in the custody or under the control of laboratories, hospitals, audiologists, physicians, or other health-care providers to record and analyze the data related to the child's hearing impairment or suspected hearing impairment;

(c) Provide guidance on protocols and equipment to be utilized during diagnostic hearing evaluations of infants and toddlers;

(d) Compile and publish statistical and other studies derived from the patient data obtained under this section to provide in an accessible form information that is useful to physicians, other medical personnel, the State Department of Education, the Legislature and the general public;

(e) Comply with requirements as necessary to obtain federal funds in the maximum amounts and in the most advantageous portions possible; and

(f) Receive and use gifts made for the purpose of this section.

(5) Data obtained by the establishment of the early hearing detection and intervention program that is taken directly from the medical records of a patient is for the confidential use of the State Department of Health and the persons or public or private entities that the department determines are necessary to carry out the intent of the program. The data is privileged and may not be divulged or made public in a manner that discloses the identity of an individual whose medical records have been used for obtaining data for the early hearing detection and intervention program. Information that may identify an individual whose medical records have been used for obtaining data for this section is not available for public inspection under the Mississippi Public Records Act of 1983. Statistical information collected under this section is public information.

(6) The following persons who act in compliance with this section are not civilly or criminally liable for furnishing information required by this section: a hospital, clinical laboratory or other health-care facility, an audiologist, an

administrator, officer or employee of a hospital or other health-care facility, and a physician or employee of a physician.

HISTORY:
Laws, 1997, ch. 514, § 3; Laws, 2001, ch. 419, § 3, eff from and after July 1, 2001.

Cross References —
Mississippi Public Records Act of 1983, see §§ 25-61-1 et seq.

Federal Aspects—
Individuals with Disabilities Education Act (IDEA), see 20 USCS §§ 1400 et seq.

§ 41-90-7. Appointment of advisory committee.

The State Health Officer shall appoint an advisory committee of at least nine (9) members that may include physician(s), audiologist(s), educator(s), parent(s) and others as appropriate. The committee shall provide advice to the State Interagency Coordinating Council established under Section 41-87-7, and the State Department of Health on issues regarding this chapter and its provisions. The committee shall be created so that members serve for three (3) years and one-third (⅓) of its members are retired annually, unless reappointed.

HISTORY:
Laws, 1997, ch. 514, § 4; Laws, 2001, ch. 419, § 4, eff from and after July 1, 2001.

Joint Legislative Committee Note —
Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in the second sentence. The words "this act" were changed to "this chapter." The Joint Committee ratified the correction at its May 16, 2002, meeting.

§ 41-90-9. Fiscal support for Department of Health.

(1) The Legislature, knowing that hearing is essential to appropriate language development which is, in turn, directly related to communication skills and the ultimate ability of a child to attain his or her best level of education, and finding limited resources available in the state and few providers qualified to provide developmentally appropriate diagnostic and therapeutic services to infants and toddlers identified through the early hearing detection and intervention program, finds it necessary to supplement the efforts of the State Department of Health as lead agency for the implementation of Part C of IDEA in its efforts to identify and provide developmentally appropriate services to hearing impaired infants and toddlers and their families.

(2) To assure the best possible developmental outcomes for infants and toddlers identified through the early hearing detection and intervention program, the Legislature shall provide fiscal support to the infant and toddler early intervention program of the State Department of Health to:

(a) Establish positions reasonable and appropriate to insure that the provisions of this chapter are carried out;

(b) Procure equipment to achieve universal hearing screening of one hundred percent (100%) of live births;

(c) Procure diagnostic equipment necessary to identify the cause of the child's hearing impairment and plan an appropriate course of therapeutic services;

(d) Assist with the establishment of training programs on the education of hearing impaired children in the colleges and universities of the state;

(e) Assist with in-service training of existing providers of services to the hearing impaired population of the state to increase their skill in providing developmentally appropriate services to infants and toddlers and their families;

(f) Contract directly with individuals identified as qualified providers of services; and

(g) Provide training for appropriate staff of schools and school districts to insure the successful transition of children upon reaching age three (3) from Part C to services under Part B of IDEA through schools across the state or other appropriate services.

HISTORY:

Laws, 1997, ch. 514, § 5; Laws, 2001, ch. 419, § 5, eff from and after July 1, 2001.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in (2)(a). The words "this act " were changed to "this chapter." The Joint Committee ratified the correction at its May 16, 2002, meeting.

Cross References —

Early Intervention Act for Infants and Toddlers, see §§ 41-87-1 et seq.

Federal Aspects—

Individuals with Disabilities Education Act (IDEA), see 20 USCS §§ 1400 et seq.

CHAPTER 91.

CENTRAL CANCER REGISTRY

Sec.

41-91-1. Short title.

41-91-3. Definitions.

41-91-5. Department to establish and maintain central cancer registry; central data bank; use of data.

41-91-7. Board to adopt rules and regulations; powers of board.

41-91-9. Department to publish reports with other cancer reporting organizations and research institutions.

41-91-11. Confidentiality of patients' medical records.

41-91-13. Persons exempt from civil or criminal liability for furnishing information.

41-91-15. Penalties for failure to provide, or for misuse of, information.

§ 41-91-1. Short title.

This chapter shall be known and may be cited as the Mississippi Cancer Registry Act.

HISTORY:
Laws, 1993, ch. 529, § 1, eff from and after July 1, 1993.

§ 41-91-3. Definitions.

The following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Board" means the State Board of Health.

(b) "Department" means the State Department of Health.

HISTORY:
Laws, 1993, ch. 529, § 2, eff from and after July 1, 1993.

§ 41-91-5. Department to establish and maintain central cancer registry; central data bank; use of data.

(1) The department may establish and maintain a central cancer registry for the state.

(2) The cancer registry shall be a central data bank of accurate, precise and current information that medical authorities agree serves as an invaluable tool in the early recognition, prevention, cure and control of cancer. Registry data can be used to plan and evaluate cancer control measures in the areas of risk assessment, prevention, early detection, patient care, public and professional education and clinical research.

HISTORY:
Laws, 1993, ch. 529, § 3, eff from and after July 1, 1993.

§ 41-91-7. Board to adopt rules and regulations; powers of board.

(1) The board may adopt rules and regulations that the board considers necessary to implement this chapter.

(2) The board in its rules and regulations shall specify the types of information to be provided to cancer registry and the persons and entities who are required to provide such information to the cancer registry.

(3) The department may:

(a) Execute contracts that the department considers necessary;

(b) Receive the data from medical records of cases of cancer that are in the custody or under the control of clinical laboratories, hospitals, physician's offices and cancer treatment centers or other health-care providers to record and analyze the data related to those diseases;

(c) Compile and publish statistical and other studies derived from the patient data obtained under this chapter to provide, in an accessible form, information that is useful to physicians, other medical personnel and the general public;

(d) Comply with requirements as necessary to obtain federal funds in the maximum amounts and most advantageous proportions possible; and

(e) Receive and use gifts made for the purpose of this chapter.

HISTORY:
Laws, 1993, ch. 529, § 4, eff from and after July 1, 1993.

§ 41-91-9. Department to publish reports with other cancer reporting organizations and research institutions.

The department, in cooperation with other cancer reporting organizations and research institutions, may publish reports the department determines are necessary or desirable to carry out the purpose of this chapter.

HISTORY:
Laws, 1993, ch. 529, § 5, eff from and after July 1, 1993.

§ 41-91-11. Confidentiality of patients' medical records.

(1) Data obtained under this chapter directly from the medical records of a patient is for the confidential use of the department and the persons or public or private entities that the department determines are necessary to carry out the intent of this chapter. The data is privileged and may not be divulged or made public in a manner that discloses the identity of an individual whose medical records have been used for obtaining data under this chapter.

(2) Information that may identify an individual whose medical records have been used for obtaining data under this chapter is not available for public inspection under the Mississippi Public Records Act of 1983.

(3) Statistical information collected under this chapter is public information.

HISTORY:
Laws, 1993, ch. 529, § 6, eff from and after July 1, 1993.

Cross References —
Mississippi Public Records Act of 1983, see §§ 25-61-1 et seq.

§ 41-91-13. Persons exempt from civil or criminal liability for furnishing information.

The following persons who act in compliance with this chapter are not civilly or criminally liable for furnishing the information required hereunder:

(a) A hospital, clinical laboratory, cancer treatment center or other health-care facility;

(b) An administrator, officer or employee of a hospital, clinical laboratory, cancer treatment center or other health-care facility; and

(c) A physician or employee of a physician.

HISTORY:
Laws, 1993, ch. 529, § 7, eff from and after July 1, 1993.

§ 41-91-15. Penalties for failure to provide, or for misuse of, information.

Any person or entity who fails to provide the information required to be provided to the cancer registry or who misuses the information provided to the cancer registry shall be subject to a civil penalty of Fifty Dollars ($50.00) for each such failure or misuse. Such penalty shall be assessed and levied by the board after a hearing, and all such penalties collected shall be deposited into the State General Fund.

HISTORY:
Laws, 1993, ch. 529, § 8, eff from and after July 1, 1993.

CHAPTER 93.

OSTEOPOROSIS PREVENTION AND TREATMENT EDUCATION ACT

Sec.
41-93-1. Short title.
41-93-3. Purposes of chapter.
41-93-5. Powers of State Department of Health.
41-93-7. Additional powers of State Department of Health.
41-93-9. Department may accept grants, etc.; maximization of federal funds.

§ 41-93-1. Short title.

This chapter may be cited as the "Osteoporosis Prevention and Treatment Education Act."

HISTORY:
Laws, 1994, ch. 542, § 1, eff from and after July 1, 1994.

§ 41-93-3. Purposes of chapter.

The purposes of this chapter are:

(a) To create a statewide program to promote public awareness and knowledge about the causes of osteoporosis, personal risk factors, the value of prevention and early detection and the options available for treatment;

(b) To enhance knowledge and understanding of osteoporosis by disseminating educational materials, information about research results, services and strategies for prevention and treatment to patients, health professionals and the public;

(c) To help provide easy access to clear, complete and accurate osteoporosis information and referral services;

(d) To heighten awareness about the prevention, detection and treatment of osteoporosis among state and local health and human service officials, health educators and policy makers; and

(e) To promote the development of support groups for osteoporosis patients and their families and caregivers.

HISTORY:
Laws, 1994, ch. 542, § 2, eff from and after July 1, 1994.

§ 41-93-5. Powers of State Department of Health.

The State Department of Health may:

(a) Add sufficient qualified staff to implement the Osteoporosis Prevention and Treatment Education Program established by Section 41-93-7;

(b) Provide appropriate training for staff of the Osteoporosis Prevention and Treatment Education Program;

(c) Work to improve the capacity of community-based services available to osteoporosis patients;

(d) Work with governmental offices, community and business leaders, community organizations, health care and human service providers and national osteoporosis organizations to coordinate efforts and maximize state resources in the areas of prevention, education and treatment of osteoporosis;

(e) Identify and, when appropriate, replicate or use successful osteoporosis programs and procure related materials and services from organizations with appropriate expertise and knowledge of osteoporosis.

HISTORY:

Laws, 1994, ch. 542, § 3, eff from and after July 1, 1994.

§ 41-93-7. Additional powers of State Department of Health.

(1) The State Department of Health may establish, maintain and promote an osteoporosis prevention and treatment education program in order to raise public awareness, educate consumers and educate health professionals and teachers, and for other purposes, as provided in this section.

(2) The department may design and implement strategies for raising public awareness on the causes and nature of osteoporosis, personal risk factors, value of prevention and early detection and options for diagnosing and treating the disease.

(3) The department may develop and work with other agencies in presenting educational programs for physicians and other health professionals in the most up-to-date, accurate scientific and medical information on osteoporosis prevention, diagnosis and treatment, therapeutic decision-making, including guidelines for detecting and treating the disease in special populations, risks and benefits of medications and research advances.

(4) The department may conduct a needs assessment to identify:

(a) Available technical assistance and educational materials and programs nationwide;

(b) The level of public and professional awareness about osteoporosis;

(c) The needs of osteoporosis patients, their families and caregivers;

(d) Needs of health-care providers, including physicians, nurses, managed care organizations and other health-care providers;

(e) The services available to osteoporosis patients;

(f) Existence of osteoporosis treatment programs;

(g) Existence of osteoporosis support groups;

(h) Existence of rehabilitation services; and

(i) Number and location of bone density testing equipment.

(5) Based on the needs assessment conducted under subsection (4) of this section, the department may develop, maintain and make available a list of osteoporosis-related services and osteoporosis health-care providers with specialization in services to prevent, diagnose and treat osteoporosis.

HISTORY:
Laws, 1994, ch. 542, § 4, eff from and after July 1, 1994.

§ 41-93-9. Department may accept grants, etc.; maximization of federal funds.

(1) The department may accept grants, services and property from the federal government, foundations, organizations, medical schools and other entities as may be available for the purposes of fulfilling the obligations of this program.

(2) The department shall seek any federal waiver or waivers that may be necessary to maximize funds from the federal government to implement this program.

HISTORY:
Laws, 1994, ch. 542, § 5, eff from and after July 1, 1994.

CHAPTER 95.

MISSISSIPPI HEALTH POLICY ACT OF 1994 [REPEALED]

Sec.
41-95-1 and 41-95-3. Repealed.
41-95-5 and 41-95-7. Repealed.
41-95-9. Repealed.

§§ 41-95-1 and 41-95-3. Repealed.

Repealed by Laws of 2017, ch. 404, § 3, effective from and after July 1, 2017.

§ 41-95-1. [Laws, 1994, ch. 649, § 28, eff from and after July 1, 1994.]

§ 41-95-3. [Laws, 1994, ch. 649, § 29, eff from and after July 1, 1994.]

Editor's Notes —

Former § 41-95-1 provided the short title for the chapter.

Former § 41-95-3 provided definitions for terms used in the chapter.

§§ 41-95-5 and 41-95-7. Repealed.

Repealed by Laws of 2017, ch. 402, §§ 5 and 6, effective from and after July 1, 2017.

§ 41-95-5. [Laws, 1994, ch. 649, § 30, eff from and after July 1, 1994.]

§ 41-95-7. [Laws, 1994, ch. 649, § 31, eff from and after July 1, 1994.]

Editor's Notes —

Former § 41-95-5 created the Mississippi Health Finance Authority.

Former § 41-95-7 prescribed the duties and responsibilities of the Mississippi Health Finance Board.

§ 41-95-9. Repealed.

Repealed by Laws 1994, ch. 649, § 32, eff June 30, 1995.

[En Laws, 1994, ch. 649, § 32]

Editor's Notes —

Former § 41-95-9 related to transfer of powers to the Mississippi Health Finance Authority.

CHAPTER 97.

STATE EMPLOYEE WELLNESS AND PHYSICAL FITNESS PROGRAMS

State Employee Wellness and Physical Fitness Programs [Repealed] 41-97-1
State Employee Wellness Program. 41-97-9

STATE EMPLOYEE WELLNESS AND PHYSICAL FITNESS PROGRAMS [REPEALED]

Sec.
41-97-1 through 41-97-7. Repealed.

§§ 41-97-1 through 41-97-7. Repealed.

Repealed by Laws of 2010, ch. 516, § 2, effective July 1, 2010.
§ 41-97-1. [Laws, 1995, ch. 441, § 1, eff from and after July 1, 1995.]
§ 41-97-3. [Laws, 1995, ch. 441, § 2, eff from and after July 1, 1995.]
§ 41-97-5. [Laws, 1995, ch. 441, § 3, eff from and after July 1, 1995.]
§ 41-97-7. [Laws, 1995, ch. 441, § 4, eff from and after July 1, 1995.]

Editor's Notes —

Former § 41-97-1 related to the administration and approval of state agency employee volunteer wellness/exercise program programs.

Former § 41-97-3 authorized the establishment of state agency wellness/exercise programs.

Former § 41-97-5 related to the duties of agencies establishing programs.

Former § 41-97-7 related to acceptance of gifts by agencies for use in programs.

STATE EMPLOYEE WELLNESS PROGRAM

Sec.
41-97-9. State employee wellness program; definitions; rules; creation of model program; designation of coordinator; state wellness councils.

§ 41-97-9. State employee wellness program; definitions; rules; creation of model program; designation of coordinator; state wellness councils.

(1) Definitions. In this section:

(a) "Department" means the Mississippi Department of Health.

(b) "State Health Officer" means the Executive Director of the Mississippi Department of Health.

(c) "State agency" means a department, institution, commission or other agency that is in the executive, judicial or legislative branch of state government.

(d) "State employee" means a state employee who participates in the state and school employees health insurance plan under Section 25-15-3 et seq.

(2) Rules. The State Board of Health is authorized to adopt rules for the administration of this section.

(3) Creation of model program; designation of coordinator.

(a) The department may designate a statewide wellness coordinator to create and develop for use by state agencies a model statewide wellness program to improve the health and wellness of state employees. The wellness program may include:

(i) Education that targets the most costly or prevalent health care claims, including information addressing stress management, nutrition, healthy eating habits, alcohol and drug abuse, physical activity, disease prevention, and smoking cessation;

(ii) The dissemination or use of available health risk assessment tools and programs, including surveys that identify an employee's risk level for health-related problems and programs that suggest to employees methods for minimizing risks;

(iii) The development of strategies for the promotion of health, nutritional and fitness-related resources in state agencies;

(iv) The development and promotion of environmental change strategies that integrate healthy behaviors and physical activity, including recommending healthy food choices in snack bars, vending machines and state-run cafeterias located in state buildings; and

(v) Optional incentives to encourage participation in the wellness program, including providing flexibility in employee scheduling to allow for physical activity and participation in the wellness program and coordinating discounts with gyms and fitness centers across the state.

(b) The statewide wellness coordinator is authorized to:

(i) Coordinate with the State and School Employees Health Insurance Management Board and other agencies that administer a health benefits program as necessary to develop the model wellness program, prevent duplication of efforts, provide information and resources to employees, and encourage the use of wellness benefits included in the health benefits program;

(ii) Maintain a set of Internet links to health resources for use by state employees;

(iii) Design an outreach campaign to educate state employees about health and fitness-related resources, including available exercise facilities, online tools, and health and fitness-related organizations;

(iv) Study the implementation and participation rates of state agency worksite wellness programs and report the findings to the Legislature biennially; and

(v) Organize an annual conference hosted by the department for all state agency wellness councils.

(c) The statewide wellness coordinator may consult with a state agency operating health care programs on matters relating to wellness promotion.

(d) A state agency shall designate an employee to serve as the wellness liaison between the agency and the statewide wellness coordinator.

(e) A state agency may implement a wellness program based on the model program or components of the model program developed under this section.

(f) The statewide wellness coordinator may assist a state agency in establishing employee wellness demonstration projects that incorporate best practices for encouraging employee participation and the achievement of wellness benefits. A wellness program demonstration project may implement strategies to optimize the return of state investment in employee wellness, including savings in direct health care costs and savings from preventing conditions and diagnoses through better employee wellness.

(4) State agency wellness councils.

(a) A state agency may facilitate the development of a wellness council composed of employees and managers of the agency to promote worksite wellness in the agency.

(b) A wellness council may work to:

(i) Increase employee interest in worksite wellness;

(ii) Develop and implement policies to improve agency infrastructure to allow for increased worksite wellness; and

(iii) Involve employees in worksite wellness programs.

(c) Members of a wellness council may review the recommendations of the statewide wellness coordinator and develop a plan to implement the recommendations.

(d) A state agency may allow its employees to participate in wellness council activities for two (2) to three (3) hours each month.

(e) The department shall provide technical support to each state agency wellness council and shall provide financial support to councils if funds are available.

(f) A wellness council may annually identify best practices for worksite wellness in the agency and report the practices to the statewide wellness coordinator.

(5) A state agency may allow all employees to attend on-site wellness seminars when offered.

HISTORY:

Laws, 2010, ch. 516, § 1, eff from and after July 1, 2010.

CHAPTER 99.

QUALIFIED HEALTH CENTER GRANT PROGRAM

Sec.
41-99-1. Definitions.
41-99-3. Establishment of Qualified Health Center Grant Program; purpose; administration by Department of Health.
41-99-5. Requirements for participation in program; restrictions on use of grants; advisory council.
41-99-7. Creation of fund for disbursements of grants.

§ 41-99-1. Definitions.

For purposes of this chapter:

(a) "Mississippi qualified health center" means a public or nonprofit entity that provides comprehensive primary care services that:

(i) Has a community board of directors, the majority of whom are users of such centers;

(ii) Accepts all patients that present themselves despite their ability to pay and uses a sliding-fee-schedule for payments; and

(iii) Serves a designated medically underserved area or population, as provided in Section 330 of the Public Health Service Act.

(b) "Uninsured or medically indigent patient" means a patient receiving services from a Mississippi qualified health center who is not eligible for Medicaid, Medicare or any other type of governmental reimbursement for health-care costs or receiving third-party payments via an employer.

(c) "Department" means the State Department of Health.

(d) "Primary care" means the basic entry level of health care provided by health-care practitioners or nonphysician health-care practitioners, which is generally provided in an outpatient setting.

(e) "Medically underserved area or population" means an area designated by the Secretary of the United States Department of Health and Human Services as an area with a shortage of professionals, health services or a population group designated by the secretary as having a shortage of those services.

(f) "Service grant" means a grant by the department to a Mississippi qualified health center in accordance with this chapter.

(g) "Program" means the Mississippi Qualified Health Center Grant Program established in this chapter.

HISTORY:

Laws, 1999, ch. 477, § 3; Laws, 2004, ch. 415, § 1, eff from and after July 1, 2004.

Federal Aspects—

Public Health Service Act, see 42 USCS §§ 201 et seq.

§ 41-99-3. Establishment of Qualified Health Center Grant Program; purpose; administration by Department of Health.

The Mississippi Qualified Health Center Grant Program is established, under the direction and administration of the State Department of Health, for the purpose of making service grants to Mississippi qualified health centers for their use in providing care to uninsured or medically indigent patients in Mississippi. The Mississippi Qualified Health Center Grant Program shall be established with such state funds as may be appropriated by the Legislature.

HISTORY:
Laws, 1999, ch. 477, § 4; Laws, 2004, ch. 415, § 2, eff from and after July 1, 2004.

§ 41-99-5. Requirements for participation in program; restrictions on use of grants; advisory council.

(1) Any Mississippi qualified health center desiring to participate in the program shall make application for a grant to the department in a form satisfactory to the department. The department shall receive grant proposals from Mississippi qualified health centers. All proposals shall be submitted in accordance with the provisions of grant procedures, criteria and standards developed and made public by the department.

(2) The department shall use the funds provided by this chapter to make grants until July 1, 2019, to Mississippi qualified health centers upon proposals made under subsection (1) of this section. Grants that are awarded to Mississippi qualified health centers shall only be used by those centers to:

(a) Increase access to preventative and primary care services by uninsured or medically indigent patients that are served by those centers; and

(b) Create new services or augment existing services provided to uninsured or medically indigent patients, including, but not limited to, primary care medical and preventive services, dental services, optometric services, in-house laboratory services, diagnostic services, pharmacy services, nutritional services and social services.

(3) Grants received by Mississippi qualified health centers under this chapter shall not be used:

(a) To supplant federal funds traditionally received by those centers, but shall be used to supplement them;

(b) For land or real estate investments;

(c) To finance or satisfy any existing debt; or

(d) Unless the health center specifically complies with the definition of a Mississippi qualified health center contained in Section 41-99-1.

(4) The department shall develop regulations, procedures and application forms to govern how grants will be awarded, shall develop a plan to ensure that grants are equitably distributed among all Mississippi qualified health centers, and shall develop an audit process to assure that grant monies are used to provide and expend care to the uninsured and medically indigent.

(5) The department shall establish a fund for the purpose of providing service grants to Mississippi qualified health centers in accordance with this chapter and the following terms and conditions:

(a) The total amount of grants issued under this chapter shall be Four Million Dollars ($4,000,000.00) per state fiscal year.

(b) No Mississippi qualified health center shall receive assistance under this program in excess of Two Hundred Thousand Dollars ($200,000.00) per calendar year.

(c) Each Mississippi qualified health center receiving a service grant shall provide a yearly report to the department that details the number of additional uninsured and medically indigent patients that are cared for and the types of services that are provided.

(6) The department shall establish an advisory council to review and make recommendations to the department on the awarding of any grants to Mississippi qualified health centers. Those recommendations by the advisory council shall not be binding upon the department, but when a recommendation by the advisory council is not followed by the department, the department shall place in its minutes reasons for not accepting the advisory council's recommendation, and provide for an appeals process. All approved grants shall be awarded within thirty (30) days of approval by the department.

(7) The composition of the advisory council shall be the following:

(a) Two (2) employees of the department, one (1) of whom must have experience in reviewing and writing grant proposals;

(b) Two (2) executive employees of Mississippi qualified health centers, one (1) of whom must be a chief financial officer;

(c) Two (2) health care providers who are affiliated with a Mississippi qualified health center; and

(d) One (1) health care provider who is not affiliated with a Mississippi qualified health center or the department but has training and experience in primary care.

(8) The department may use a portion of any grant monies received under this chapter to administer the program and to pay reasonable expenses incurred by the advisory council; however, in no case shall more than one and one-half percent (1-½%) or Sixty Thousand Dollars ($60,000.00) annually, whichever is greater, be used for program expenses.

(9) No assistance shall be provided to a Mississippi qualified health center under this chapter unless the Mississippi qualified health center certifies to the department that it will not discriminate against any employee or against any applicant for employment because of race, religion, color, national origin, sex or age.

HISTORY:

Laws, 1999, ch. 477, § 5; Laws, 2004, ch. 415, § 3; Laws, 2009, ch. 533, § 1; Laws, 2014, ch. 303, § 1, eff from and after July 1, 2014.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in (2). The words "this act" were changed to "this chapter." The Joint Committee ratified the correction at its May 16, 2002, meeting.

§ 41-99-7. Creation of fund for disbursements of grants.

There is created a special fund in the State Treasury to be known as the Mississippi Qualified Health Center Grant Program Fund, from which grants and expenditures authorized in connection with the program shall be disbursed. All monies received by legislative appropriation to carry out the purposes of this chapter shall be deposited into the Mississippi Qualified Health Center Grant Program Fund.

HISTORY:

Laws, 1999, ch. 477, § 6; Laws, 2004, ch. 415, § 4, eff from and after July 1, 2004.

CHAPTER 101.

MISSISSIPPI COUNCIL ON OBESITY PREVENTION AND MANAGEMENT

Sec.	
41-101-1.	Creation; acceptance and expenditure of grants and donations; powers, functions, and duties; composition; meetings; compensation; report and plan for implementation of services and programs; inter-departmental cooperation.
41-101-3.	Council may be established as nonprofit corporation; Department of Health may execute contracts with council for development and implementation of obesity prevention and management programs; Statewide Obesity Prevention and Management Fund established.

§ 41-101-1. Creation; acceptance and expenditure of grants and donations; powers, functions, and duties; composition; meetings; compensation; report and plan for implementation of services and programs; inter-departmental cooperation.

(1) There is created the Mississippi Council on Obesity Prevention and Management, hereinafter referred to as the "council," within the State Department of Health to be in existence for the period from July 1, 2001, until July 1, 2006, or until the council is established as a nonprofit corporation, whichever is the earlier date. The council may accept and expend grants and private donations from any source, including federal, state, public and private entities, to assist it to carry out its functions.

(2) The powers, functions and duties of the council shall include, but not be limited to, the following:

(a) The collection and analysis of data regarding the extent to which children and adults in Mississippi suffer from obesity, and the programs and services currently available to meet the needs of overweight children and adults, and the funds dedicated by the state to maintain those programs and services.

(b) The collection and analysis of data to demonstrate the economic impact on the state of treating obesity and the estimated cost savings of implementing a comprehensive statewide obesity prevention and management model.

(c) The establishment and maintenance of a resources data bank containing information about obesity and related subjects accessible to educational and research institutions, as well as members of the general public.

(d) Consideration of the feasibility of awarding tax incentives for work sites that promote activities to reduce obesity in the work force.

(e) The establishment of recommendations to enhance funding for effective prevention and management programs and services, including Medicaid, private health insurance programs, and other state and federal funds.

(f) The establishment of recommendations designed to assure that children of school age who may have early indicators of obesity have access to affordable, effective prevention and management services.

(g) The establishment of recommendations for changes to statewide elementary and secondary education curricula to implement comprehensive, coordinated obesity awareness and education programs.

(h) Recommendations to enhance clinical education curricula in medical, nursing and other schools of higher education to implement comprehensive, coordinated obesity awareness and education courses.

(i) Recommendations to increase education and awareness among primary care physicians and other health professionals regarding the recognition, prevention and effective management of obesity.

(j) Consideration of a state prevention campaign to increase public awareness of the need for early prevention and management of obesity, possibly including:

(i) A broad-based public education campaign outlining health risks associated with failure to receive treatment for obesity.

(ii) A health professional training campaign.

(iii) A targeted public education campaign directed toward high risk populations.

(k) Coordination with the United States Department of Agriculture, the United States Department of Health and Human Services, the United States Department of Education, the United States Centers for Disease Control and the National Center for Chronic Disease Prevention to share resources and information in order to ensure a comprehensive approach to obesity and obesity-related conditions.

(*l*) Coordination with the State Departments of Education, Health, Human Services and the Division of Medicaid to share resources and information in order to ensure a comprehensive approach to obesity and obesity-related conditions.

(m) Identification of and recommendations to reduce cultural, environmental and socioeconomic barriers to prevention and management of obesity in Mississippi.

(3) The council shall be composed of the following members:

(a) The Executive Director of the State Department of Health, or his designee;

(b) The Executive Director of the Department of Human Services, or his designee;

(c) The State Superintendent of Education, or his designee;

(d) The Executive Director of the State Department of Mental Health, or his designee;

(e) A representative of the Office of the Governor, to be appointed by the Governor;

(f) A member of the House of Representatives, appointed by the Speaker of the House of Representatives;

(g) A member of the Senate, appointed by the Lieutenant Governor;

(h) Two (2) representatives of the public-at-large, to be selected by the Governor;

(i) The President of either the Mississippi Medical Association or the

African-American Obesity Research and Treatment Association (AAORTA), or his designee;

(j) The President of the Mississippi State Nurses Association, or his designee;

(k) The President of the Mississippi Pharmacists Association, or his designee;

(*l*) The President of the Mississippi Chapter of the American Academy of Pediatrics, or his designee;

(m) The Vice Chancellor of the University of Mississippi Medical Center, or his designee;

(n) A representative appointed from the Mississippi state office of the American Association of Retired Persons;

(o) A representative of the Mississippi Dietetic Association;

(p) A representative of the Mississippi Restaurant Association;

(q) The President of the Mississippi Physical Therapy Association, or his designee;

(r) A member appointed by the Mississippi Commissioner of Insurance;

(s) A representative from a food processor or food manufacturer; and

(t) A representative from the Mississippi Soft Drink Association.

(4) The council shall meet upon call of the Governor not later than August 1, 2001, and shall organize for business by selecting a chairman who shall serve for a one-year term and may be selected for subsequent terms. The council shall adopt internal organizational procedures necessary for efficient operation of the council. Council procedures shall include duties of officers, a process for selecting officers, quorum requirements for conducting business and policies for any council staff. Each member of the council shall designate necessary staff of their departments to assist the council in performing its duties and responsibilities. The council shall meet and conduct business at least quarterly. Meetings of the council shall be open to the public and opportunity for public comment shall be made available at each such meeting. The chairman of the council shall notify all persons who request that notice as to the date, time and place of each meeting.

(5) Members of the council shall receive no compensation for their services.

(6) The council shall submit a report, including proposed legislation if necessary, to the Governor and to the House and Senate Health and Welfare Committees before the convening of the 2004 legislative session. The report shall include a comprehensive state plan for implementation of services and programs in the State of Mississippi to increase prevention and management of obesity in adults and children and an estimate of the cost of implementation of such a plan.

(7) All departments, boards, agencies, officers and institutions of the state and all subdivisions thereof shall cooperate with the council in carrying out its purposes under this section.

HISTORY:

Laws, 2001, ch. 432, § 1; Laws, 2003, ch. 484, § 1; Laws, 2004, ch. 574, § 3, eff from and after July 1, 2004.

OPINIONS OF THE ATTORNEY GENERAL

Section 41-101-1(3)(i) should be read as permitting representatives from both those entities to sit as members of the Council. 2003 Miss. Op. Att'y Gen. 227.

There is no authority for the Council to apply for 501(c)(3) tax exempt status. 2003 Miss. Op. Att'y Gen. 227.

The Council may file reports to the Governor and to the House and Senate Health and Welfare Committees in years subsequent to the 2004 Legislative Session. 2003 Miss. Op. Att'y Gen. 227.

§ 41-101-3. Council may be established as nonprofit corporation; Department of Health may execute contracts with council for development and implementation of obesity prevention and management programs; Statewide Obesity Prevention and Management Fund established.

(1) The chairman of the Mississippi Council on Obesity Prevention and Management established under Section 41-101-1, with participation from the members of the council, may develop and implement a plan to establish the council as a nonprofit corporation under Mississippi law. For a period of one (1) year after the council is established as a nonprofit corporation, the State Department of Health may continue to support the council by providing meeting space, office space and clerical assistance. After the expiration of the one-year period, the council shall be responsible for obtaining the funds necessary to support the operating needs of the council.

(2) After the council is established as a nonprofit corporation, the State Department of Health may execute a contract with the council to develop and implement comprehensive statewide obesity prevention and management programs. The contract shall contain provisions to require that the council will:

(a) Encourage and assist local communities, workplaces, health insurance companies, churches, schools and other public and private entities to develop and implement obesity prevention and management programs and services, and encourage cooperative, comprehensive programs that reach across all segments of the population.

(b) Encourage and assist health-care providers to develop, implement, and track and report the outcomes of effective weight management products and services, and coordinate the efforts of health-care providers and health plans in exploring the potential for cost-effective obesity management benefits.

(c) Serve as the state clearinghouse for information on ideas, projects and outcomes to make local and statewide programs more effective.

(d) Implement statewide communication programs to alert people to the problem of obesity and how it can be prevented and treated.

(e) Coordinate an annual statewide project that will heighten public awareness of the problem of obesity.

(f) Establish an annual awards program to recognize individual and community achievement in obesity prevention and management.

(g) Serve as the authority that approves and disburses financial assistance to any nonprofit corporation, county or municipality that, in a written application, seeks that assistance to implement a local obesity prevention or management program.

(h) Encourage the donation of funds from the private sector to support the operating costs of the council and to assist in defraying the operation of the programs implemented under this section.

The contract may include any additional provisions that the State Department of Health deems necessary to effectuate the obesity prevention and management programs contemplated by this section.

The council shall submit to the State Department of Health not later than August 1 of each year a written report detailing the operation of obesity prevention and management programs statewide and its expenditure of monies for those programs during the preceding state fiscal year.

(3) After the council is established as a nonprofit corporation:

(a) The Division of Medicaid may execute a contract with the council for obesity prevention and management programs that serve the Medicaid population.

(b) The State Department of Education may execute a contract with the council for obesity prevention and management programs that serve the school population.

(c) Any other state agency, department or institution may execute a contract with the council for obesity prevention and management programs that serve the target population of the agency department or institution.

(4) The obesity prevention and management programs authorized under subsections (2) and (3) of this section may be funded by private grants, federal or state grants obtained by the agency, department or institution, funds appropriated by the Legislature to the agency, department or institution, or private funds obtained by the council.

(5) There is established in the State Treasury a special fund to be known as the Statewide Obesity Prevention and Management Fund. Monies may be expended from the fund, upon appropriation by the Legislature to the appropriate agencies, departments and institutions, to implement the statewide obesity prevention and management programs authorized under subsections (2) and (3) of this section. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in the fund shall be deposited to the credit of the fund.

HISTORY:

Laws, 2004, ch. 574, § 2, eff from and after July 1, 2004.

CHAPTER 103.

TASK FORCE ON HEART DISEASE AND STROKE PREVENTION

Sec.
41-103-1. Creation of task force; membership; officers; meetings; administration; compensation.
41-103-3. Duties of task force; reports to Legislature and Governor.

§ 41-103-1. Creation of task force; membership; officers; meetings; administration; compensation.

(1) There is created the Task Force on Heart Disease and Stroke Prevention, which will be responsible for making available state-of-the-art information on heart disease and stroke education, prevention and treatment to health-care providers in Mississippi. The task force will serve as a consensus group designed to coordinate efforts in heart disease and stroke education, prevention and treatment.

(2) The task force will consist of nineteen (19) members. Membership of the task force will include one (1) representative from each of the following agencies, organizations or entities, as designated by each respective agency, organization or entity:

(a) State Department of Health;
(b) State Department of Education;
(c) Division of Medicaid, Office of the Governor;
(d) State Department of Health, Division of Emergency Medical Services;
(e) American Heart Association (Southeast Affiliate – Mississippi);
(f) Mississippi State Medical Association;
(g) Mississippi Nurses Association;
(h) Mississippi Hospital Association;
(i) Mississippi Primary Health Care Association;
(j) University of Mississippi Medical Center;
(k) Mississippi Chronic Illness Coalition;
(*l*) Mississippi Alliance for School Health;
(m) Information and Quality Health Care;
(n) Mississippi Association of Health System Pharmacists;
(o) Health Research and Educational Foundation, Inc.; and
(p) Association of Black Cardiologists.

(3) In addition to the members designated in subsection (2), membership of the task force will consist of the following persons:

(a) One (1) member of the Mississippi House of Representatives, appointed by the Speaker of the House;
(b) One (1) member of the Mississippi Senate, appointed by the Lieutenant Governor; and
(c) One (1) person appointed by the Governor.

(4) At its first meeting, the task force shall elect a chairman and other necessary officers from among its membership. The chairman and other officers shall be elected annually by the task force. The task force shall adopt bylaws and rules for its efficient operation. The task force may establish committees that will be responsible for conducting specific task force programs or activities.

(5) The task force shall meet and conduct business at least quarterly. All meetings of the task force and any committees of the task force will be open to the public, with opportunities for public comment provided on a regular basis. Notice of all meetings shall be given as provided in the Open Meetings Act (Section 25-41-1 et seq.) and appropriate notice also shall be given to all persons so requesting of the date, time and place of each meeting. Ten (10) members of the task force will constitute a quorum for the transaction of business.

(6) The task force is assigned to the State Department of Health for administrative purposes only, and the department shall designate staff to assist the task force. The task force will have a line item in the budget of the State Department of Health and will be financed through the department's annual appropriation.

(7) Members of the task force who are not legislators, state officials or state employees may be compensated at the per diem rate authorized by Section 25-3-69 and may be reimbursed in accordance with Section 25-3-41 for mileage and actual expenses incurred in the performance of their duties. Legislative members of the task force will be paid from the contingent expense funds of their respective houses in the same manner as provided for committee meetings when the Legislature is not in session. However, legislative members will not be paid per diem or expenses for attending meetings of the task force while the Legislature is in session. No task force member may incur per diem, travel or other expenses unless previously authorized by vote, at a meeting of the task force, which action must be recorded in the official minutes of the meeting. Nonlegislative members may be paid from any funds made available to the task force for that purpose.

HISTORY:
Laws, 2001, ch. 588, § 1; Laws, 2004, ch. 310, § 1, eff from and after July 1, 2004.

§ 41-103-3. Duties of task force; reports to Legislature and Governor.

(1) The Task Force on Heart Disease and Stroke Prevention has the following duties:

(a) Undertake a statistical and qualitative examination of the incidence and causes of heart disease and stroke deaths and risks, including identification of subpopulations at highest risk for developing heart disease and stroke, and establish a profile of the social and economic burden of heart disease and stroke in Mississippi;

(b) Publicize the profile of the heart disease and stroke burden and its preventability in Mississippi;

(c) Identify priority strategies that are effective in preventing and controlling risks for heart disease and stroke, based on recommendations promulgated by the American Heart Association and the American Stroke Association;

(d) Adopt and promote a statewide comprehensive heart disease and stroke prevention plan to the general public, state and local elected officials, various public and private organizations and associations, business and industries, agencies, potential funders and other community resources;

(e) Identify and facilitate specific commitments to help implement the plan from the entities listed in paragraph (d);

(f) Facilitate coordination of and communication among state and local agencies and organizations regarding current or future involvement in achieving the aims of the plan;

(g) Receive and consider reports and testimony from individuals, local health departments, community-based organizations, voluntary health organizations, and other public and private organizations statewide, to learn more about their contributions to heart disease and stroke prevention, and their ideas for improving heart disease and stroke prevention in Mississippi;

(h) Determine the burden that delayed or inappropriate heart disease and stroke treatment has on the quality of patients' lives and on their financial resources;

(i) Study the economic impact of early heart disease and stroke treatment, especially with regard to quality of care, reimbursement issues and rehabilitation;

(j) Determine what constitutes high quality treatment for heart disease and stroke, and adopt and disseminate guidelines for the treatment of heart disease and stroke patients throughout the state; and

(k) Complete a detailed and specific plan of action for the State of Mississippi, and begin implementing the plan.

(2) The task force shall submit a preliminary report to the Legislature and the Governor within six (6) months of the first meeting; a second report during the 2002 Regular Session of the Legislature; and a third report by December 1, 2002. The reports shall address the plans, actions and resources needed to achieve its accomplishment, and progress in achieving implementation of the plan to reduce the occurrence of and burden from heart disease and stroke in Mississippi. The reports shall include an accounting of funds expended and anticipated funding needs for full implementation of recommended plans and programs. The task force will continue to submit reports to the Legislature and the Governor on an annual basis, updating the progress of implementing the state plan.

HISTORY:

Laws, 2001, ch. 588, § 2; Laws, 2004, ch. 310, § 2, eff from and after July 1, 2004.

CHAPTER 105.

HEALTHCARE COORDINATING COUNCIL [REPEALED]

Sec.
41-105-1 and 41-105-3. Repealed.

§§ 41-105-1 and 41-105-3. Repealed.

Repealed by Laws of 2017, ch. 402, § 7, effective from and after July 1, 2017.

§ 41-105-1. [Laws, 2002, ch. 469, § 1, eff from and after passage (approved Mar. 25, 2002.)]

§ 41-105-3. [Laws, 2002, ch. 469, § 2, eff from and after passage (approved Mar. 25, 2002.)]

Editor's Notes —

Former § 41-105-1 established the Healthcare Coordinating Council.

Former § 41-105-3 prescribed duties for the Healthcare Coordinating Council.

CHAPTER 107.

HEALTH CARE RIGHTS OF CONSCIENCE

Sec.	
41-107-1.	Title.
41-107-3.	Definitions.
41-107-5.	Rights of Conscience of Health-Care Providers.
41-107-7.	Rights of Conscience of Health-Care Institutions.
41-107-9.	Rights of conscience of health-care payers.
41-107-11.	Civil remedies.
41-107-13.	Severability.

§ 41-107-1. Title.

This chapter may be known and cited as the "Mississippi Health Care Rights of Conscience Act."

HISTORY:
Laws, 2004, ch. 568, § 1, eff from and after July 1, 2004.

§ 41-107-3. Definitions.

As used in this chapter:

(a) "Health-care service" means any phase of patient medical care, treatment or procedure, including, but not limited to, the following: patient referral, counseling, therapy, testing, diagnosis or prognosis, research, instruction, prescribing, dispensing or administering any device, drug, or medication, surgery, or any other care or treatment rendered by health-care providers or health-care institutions.

(b) "Health-care provider" means any individual who may be asked to participate in any way in a health-care service, including, but not limited to: a physician, physician's assistant, nurse, nurses' aide, medical assistant, hospital employee, clinic employee, nursing home employee, pharmacist, pharmacy employee, researcher, medical or nursing school faculty, student or employee, counselor, social worker or any professional, paraprofessional, or any other person who furnishes, or assists in the furnishing of, a health-care procedure.

(c) "Health-care institution" means any public or private organization, corporation, partnership, sole proprietorship, association, agency, network, joint venture, or other entity that is involved in providing health-care services, including, but not limited to: hospitals, clinics, medical centers, ambulatory surgical centers, private physician's offices, pharmacies, nursing homes, university medical schools and nursing schools, medical training facilities, or other institutions or locations where health-care procedures are provided to any person.

(d) "Health-care payer" means any entity or employer that contracts for, pays for, or arranges for the payment of, in whole or in part, a health-care service, including, but not limited to, health maintenance organizations, health plans, insurance companies or management services organizations.

(e) "Employer" means any individual or entity that pays for or provides health benefits or health insurance coverage as a benefit to its employees, whether through a third party, a health maintenance organization, a program of self-insurance, or some other means.

(f) "Participate" in a health-care service means to counsel, advise, provide, perform, assist in, refer for, admit for purposes of providing, or participate in providing, any health-care service or any form of such service.

(g) "Pay" or "payment" means pay, contract for, or otherwise arrange for the payment of, in whole or in part.

(h) "Conscience" means the religious, moral or ethical principles held by a health-care provider, the health-care institution or health-care payer. For purposes of this chapter, a health-care institution or health-care payer's conscience shall be determined by reference to its existing or proposed religious, moral or ethical guidelines, mission statement, constitution, bylaws, articles of incorporation, regulations or other relevant documents.

HISTORY:

Laws, 2004, ch. 568, § 2, eff from and after July 1, 2004.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the (h). "This chapter" was substituted for "this act" at the beginning of the second sentence.

§ 41-107-5. Rights of Conscience of Health-Care Providers.

(1) **Rights of Conscience.** A health-care provider has the right not to participate, and no health-care provider shall be required to participate in a health-care service that violates his or her conscience. However, this subsection does not allow a health-care provider to refuse to participate in a health-care service regarding a patient because of the patient's race, color, national origin, ethnicity, sex, religion, creed or sexual orientation.

(2) **Immunity from Liability.** No health-care provider shall be civilly, criminally, or administratively liable for declining to participate in a health-care service that violates his or her conscience. However, this subsection does not exempt a health-care provider from liability for refusing to participate in a health-care service regarding a patient because of the patient's race, color, national origin, ethnicity, sex, religion, creed or sexual orientation.

(3) **Discrimination.** It shall be unlawful for any person, health-care provider, health-care institution, public or private institution, public official, or any board which certifies competency in medical specialties to discriminate against any health-care provider in any manner based on his or her declining to participate in a health-care service that violates his or her conscience. For purposes of this chapter, discrimination includes, but is not limited to: termination, transfer, refusal of staff privileges, refusal of board certification, adverse administrative action, demotion, loss of career specialty, reassignment to a different shift, reduction of wages or benefits, refusal to award any grant, contract, or other program, refusal to provide residency training opportunities, or any other penalty, disciplinary or retaliatory action.

HISTORY:
Laws, 2004, ch. 568, § 3, eff from and after July 1, 2004.

Joint Legislative Committee Note —
Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (3). "This chapter" was substituted for "this act" following "Purposes of" in the second sentence.

§ 41-107-7. Rights of Conscience of Health-Care Institutions.

(1) **Rights of Conscience.** A health-care institution has the right not to participate, and no health-care institution shall be required to participate in a health-care service that violates its conscience. However, this subsection does not allow a health-care institution to refuse to participate in a health-care service regarding a patient because of the patient's race, color, national origin, ethnicity, sex, religion, creed or sexual orientation.

(2) **Immunity from Liability.** A health-care institution that declines to provide or participate in a health-care service that violates its conscience shall not be civilly, criminally or administratively liable if the institution provides a consent form to be signed by a patient before admission to the institution stating that it reserves the right to decline to provide or participate in a health-care service that violates its conscience. However, this subsection does not exempt a health-care institution from liability for refusing to participate in a health-care service regarding a patient because of the patient's race, color, national origin, ethnicity, sex, religion, creed or sexual orientation.

(3) **Discrimination.** It shall be unlawful for any person, public or private institution, or public official to discriminate against any health-care institution, or any person, association, corporation, or other entity attempting to establish a new health-care institution or operating an existing health-care institution, in any manner, including, but not limited to, any denial, deprivation or disqualification with respect to licensure, any aid assistance, benefit or privilege, including staff privileges, or any authorization, including authorization to create, expand, improve, acquire, or affiliate or merge with any health-care institution, because such health-care institution, or person, association, or corporation planning, proposing, or operating a health-care institution, declines to participate in a health-care service which violates the health-care institution's conscience.

(4) **Denial of Aid or Benefit.** It shall be unlawful for any public official, agency, institution, or entity to deny any form of aid, assistance, grants or benefits, or in any other manner to coerce, disqualify or discriminate against any person, association, corporation or other entity attempting to establish a new health-care institution or operating an existing health-care institution because the existing or proposed health-care institution declines to participate in a health-care service contrary to the health-care institution's conscience.

HISTORY:
Laws, 2004, ch. 568, § 4, eff from and after July 1, 2004.

§ 41-107-9. Rights of conscience of health-care payers.

(1) **Rights of Conscience.** A health-care payer has the right to decline to pay, and no health-care payer shall be required to pay for or arrange for the payment of a health-care service that violates its conscience. However, this subsection does not allow a health-care payer to decline to pay or arrange for the payment of a health-care service regarding a patient because of the patient's race, color, national origin, ethnicity, sex, religion, creed or sexual orientation.

(2) **Immunity from Liability.** No health-care payer and no person, association, corporation or other entity that owns, operates, supervises or manages a health-care payer shall be civilly or criminally liable by reason of the health-care payer's declining to pay for or arrange for the payment of a health-care service that violates its conscience. However, this subsection does not exempt from liability a health-care payer, or the owner, operator, supervisor or manager of a health-care payer, for declining to pay or arranging for the payment of a health-care service regarding a patient because of the patient's race, color, national origin, ethnicity, sex, religion, creed or sexual orientation.

(3) **Discrimination.** It shall be unlawful for any person, public or private institution, or public official to discriminate against any health-care payer, or any person, association, corporation, or other entity (a) attempting to establish a new health-care payer, or (b) operating an existing health-care payer, in any manner, including, but not limited to, any denial, deprivation, or disqualification with respect to licensure, aid, assistance, benefit, privilege or authorization, including, but not limited to, any authorization to create, expand, improve, acquire, affiliate or merge with any health-care payer, because a health-care payer, or a person, association, corporation or other entity planning, proposing or operating a health-care payer declines to pay for or arrange for the payment of any health-care service that violates its conscience.

(4) **Denial of Aid or Benefits.** It shall be unlawful for any public official, agency, institution or entity to deny any form of aid, assistance, grants, or benefits or in any other manner coerce, disqualify or discriminate against any health-care payer, or any person, association, corporation or other entity attempting to establish a new health-care payer or operating an existing health-care payer because the existing or proposed health-care payer declines to pay for, or arrange for the payment of, any health-care service that is contrary to its conscience.

HISTORY:
Laws, 2004, ch. 568, § 5, eff from and after
July 1, 2004.

§ 41-107-11. Civil remedies.

(1) A civil action for damages or injunctive relief, or both, may be brought for the violation of any provision of this chapter. It shall not be a defense to any claim arising out of the violation of this chapter that such violation was

necessary to prevent additional burden or expense on any other health-care provider, health-care institution, individual or patient.

(2) **Damage Remedies.** Any individual, association, corporation, entity or health-care institution injured by any public or private individual, association, agency, entity or corporation by reason of any conduct prohibited by this chapter may commence a civil action. Upon finding a violation of this chapter, the aggrieved party shall be entitled to recover threefold the actual damages, including pain and suffering, sustained by such individual, association, corporation, entity or health-care institution, the costs of the action, and reasonable attorney's fees; but in no case shall recovery be less than Five Thousand Dollars ($5,000.00) for each violation in addition to costs of the action and reasonable attorney's fees. These damage remedies shall be cumulative, and not exclusive of other remedies afforded under any other state or federal law.

(3) **Injunctive Remedies.** The court in such civil action may award injunctive relief, including, but not limited to, ordering reinstatement of a health-care provider to his or her prior job position.

HISTORY:

Laws, 2004, ch. 568, § 6, eff from and after July 1, 2004.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (1) and (2). "This chapter" was substituted for "this act" in the first sentence of (1) and in the first and second sentences of (2).

§ 41-107-13. Severability.

The provisions of this chapter are declared to be severable, and if any provision, word, phrase or clause of this chapter or the application thereof to any person shall be held invalid, such invalidity shall not affect the validity of the remaining portions of this chapter.

HISTORY:

Laws, 2004, ch. 568, § 7, eff from and after July 1, 2004.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the section. "This chapter" was substituted for "this act" throughout the section.

CHAPTER 109.

LEONARD MORRIS CHRONIC KIDNEY DISEASE LEADERSHIP TASK FORCE
[REPEALED]

Sec.
41-109-1 through 41-109-7. Repealed.

§§ 41-109-1 through 41-109-7. Repealed.

Repealed by Laws, 2011, ch. 529, § 4, effective July 1, 2014.

§ 41-109-1. [Laws, 2006, ch. 524, § 1; reenacted and amended, Laws, 2011, ch. 529, § 1, eff from and after July 1, 2011.]

§ 41-109-3. [Laws, 2006, ch. 524, § 2; reenacted and amended, Laws, 2011, ch. 529, § 2, eff from and after July 1, 2011.]

§ 41-109-5. [Laws, 2006, ch. 524, § 3; Laws, 2007, ch. 455, § 1; reenacted and amended, Laws, 2011, ch. 529, § 3, eff from and after July 1, 2011.]

§ 41-109-7. [Laws, 2006, ch. 524, § 4; Laws, 2007, ch. 455, § 2; Laws, 2011, ch. 529, § 4, eff from and after July 1, 2011.]

Editor's Notes —

Former § 41-109-1 related to legislative findings and the creation of the Leonard Morris Chronic Kidney Disease Leadership Task Force.

Former § 41-109-3 related to the composition of the task force, appointment of members and compensation for service on the task force.

Former § 41-109-5 related to the duties of the task force.

Former § 41-109-7 was the repealer for Chapter 109.

CHAPTER 111.

CHILD DEATH REVIEW PANEL

Sec.
41-111-1. Child death review panel created; purpose; panel membership; annual report; contents of report [Repealed effective July 1, 2021].

§ 41-111-1. Child death review panel created; purpose; panel membership; annual report; contents of report [Repealed effective July 1, 2021].

(1) There is created the Child Death Review Panel, whose primary purpose is to foster the reduction of infant and child mortality and morbidity in Mississippi and to improve the health status of infants and children.

(2) The Child Death Review Panel shall be composed of seventeen (17) voting members: the State Medical Examiner or his representative, a pathologist on staff at the University of Mississippi Medical Center, an appointee of the Lieutenant Governor, an appointee of the Speaker of the House of Representatives, and one (1) representative from each of the following: the State Coroners Association, the Mississippi Chapter of the American Academy of Pediatrics, the Office of Vital Statistics in the State Department of Health, the Attorney General's office, the State Sheriff's Association, the Mississippi Police Chiefs Association, the Department of Human Services, the Children's Advocacy Center, the State Chapter of the March of Dimes, the State SIDS Alliance, the Mississippi Children's Safe Center, Safe Kids Mississippi, and the Mississippi State Fire Marshal's office.

(3) The Chairman of the Child Death Review Panel shall be elected annually by the Review Panel membership. The Review Panel shall develop and implement such procedures and policies necessary for its operation, including obtaining and protecting confidential records from the agencies and officials specified in subsection (4) of this section. The Review Panel shall be assigned to the State Department of Health for administrative purposes only, and the department shall designate staff to assist the Review Panel.

(4) The Child Death Review Panel shall submit a report annually to the Chairmen of the House Public Health and Human Services Committee and the Senate Public Health and Welfare Committee on or before December 1. The report shall include the numbers, causes and relevant demographic information on child and infant deaths in Mississippi, and appropriate recommendations to the Legislature on how to most effectively direct state resources to decrease infant and child deaths in Mississippi. Data for the Review Panel's review and reporting shall be provided to the Review Panel, upon the request of the Review Panel, by the State Medical Examiner's office, State Department of Health, Department of Human Services, medical examiners, coroners, health care providers, law enforcement agencies, any other agencies or officials having information that is necessary for the Review Panel to carry out its duties under this section. The State Department of Health shall also be

responsible for printing and distributing the annual report(s) on child and infant deaths in Mississippi.

(5) This section shall stand repealed on July 1, 2021.

HISTORY:

Laws, 2006, ch. 556, § 1; Laws, 2007, ch. 373, § 1; Laws, 2008, ch. 304, § 1; Laws, 2010, ch. 310, § 1; Laws, 2010, ch. 498, § 2; Laws, 2013, ch. 482, § 1; Laws, 2015, ch. 465, § 2, eff from and after July 1, 2015; Laws, 2018, ch. 337, § 1, eff from and after July 1, 2018.

Joint Legislative Committee Note —

Section 2 of ch. 498, Laws of 2010, effective July 1, 2010 (approved April 7, 2010), amended this section. Section 1 of ch. 310, Laws of 2010, effective July 1, 2010 (approved March 3, 2010), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 498, Laws of 2010, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Notes —

Section 43-26-1, enacted by Chapter 494, Laws of 2016, effective May 13, 2016, provides that from and after July 1, 2018, the programs and services provided by the Office of Family and Children's Services of the Department of Human Services under this section will be provided by the Department of Child Protection Services.

Amendment Notes —

The 2018 amendment extended the date of the repealer for the section by substituting "July 1, 2021" for "July 1, 2018" in (5).

Cross References —

SIDS/Child Death Scene Investigation reports, see § 41-61-75.

OPINIONS OF THE ATTORNEY GENERAL

The Child Death Review Panel has access to any relevant confidential records maintained by the state medical examiner and any relevant public or non-confidential records. 2006 Miss. Op. Att'y Gen. 316.

CHAPTER 112.

MATERNAL MORTALITY REVIEW COMMITTEE

Sec.
41-112-1. Maternal Mortality Review Committee created; purpose; annual report; confidentiality of records provided, obtained, created or maintained.

§ 41-112-1. Maternal Mortality Review Committee created; purpose; annual report; confidentiality of records provided, obtained, created or maintained.

(1) The State Department of Health is authorized to establish the Maternal Mortality Review Committee to review maternal deaths and establish strategies to prevent maternal deaths. The committee shall be multidisciplinary and be composed of such members as deemed appropriate by the department. The committee may develop subcommittees to carry out the purposes of the committee.

(2) The chairman of the committee shall be elected annually by the committee membership. The committee shall develop and implement such procedures and policies necessary for its operation, including providing the necessary data, information and resources to ensure successful completion of the ongoing review required by this section. The committee shall be assigned to the State Department of Health for administrative purposes, and the department shall designate staff to assist the committee.

(3) The committee shall submit a report annually to the Chairmen of the House Public Health and Human Services Committee and the Senate Public Health and Welfare Committee on or before December 1. The report shall include the numbers, causes and relevant demographic information on maternal mortality deaths in Mississippi, and appropriate recommendations to the Legislature on how to most effectively direct state resources to decrease maternal mortality in Mississippi. Data for the committee's review and reporting shall be provided to the committee, upon the request of the committee, by the State Medical Examiner's Office, State Department of Health, Department of Human Services, medical examiners, coroners, health care providers, law enforcement agencies, any other agencies or officials having information that is necessary for the committee to carry out its duties under this section.

(4) Physicians licensed under Section 73-25-1 et seq., hospitals licensed under Section 41-9-1 et seq., and pharmacies licensed under Section 73-21-69 et seq., shall provide reasonable access to the committee to all relevant medical records associated with a case under review by the committee.

(5) A physician, hospital or pharmacy providing access to medical records under this section shall not be held liable for civil damages or be subject to any criminal or disciplinary action for good faith efforts in providing such records.

(6) Information, records, reports, statements, notes, memoranda or other data collected under this section shall not be admissible as evidence in any

action of any kind in any court or before any other tribunal, board, agency or person. Such information, records, reports, statements, notes, memoranda or other data shall not be exhibited nor their contents disclosed in any way, in whole or in part, by any officer or representative of the department or any other person, except as may be necessary for the purpose of furthering the review of the committee of the case to which they relate. No person participating in such review shall disclose, in any manner, the information so obtained except in strict conformity with such review project.

(7) All information, records of interviews, written reports, statements, notes, memoranda or other data obtained by the department, the committee, and other persons, agencies or organizations so authorized by the department under this section shall be confidential.

(8) All proceedings and activities of the committee under this section, opinions of members of the committee formed as a result of those proceedings and activities, and records obtained, created, or maintained under this section, including records of interviews, written reports and statements procured by the department or any other person, agency or organization acting jointly or under contract with the department in connection with the requirements of this section, shall be confidential and shall not be subject to the Mississippi Public Records Act of 1983, Sections 25-61-1 through 25-61-17, relating to open records, or subject to subpoena, discovery or introduction into evidence in any civil or criminal proceeding; however, nothing in this section shall be construed to limit or restrict the right to discover or use in any civil or criminal proceeding anything that is available from another source and independently of the proceedings of the committee.

(9) Members of the committee shall not be questioned in any civil or criminal proceeding regarding the information presented in or opinions formed as a result of a meeting or communication of the committee; however, nothing in this section shall be construed to prevent a member of the committee from testifying to information obtained independently of the proceedings of the committee or which is public information.

(10) Reports of aggregated, nonindividually identifiable data shall be compiled on a routine basis for distribution in an effort to further study the causes and problems associated with maternal deaths. Reports shall be distributed to the Legislature, health care providers and facilities, key government agencies, and others necessary to reduce the maternal death rate.

(11) The provisions of this section, including the confidentiality provided in subsections (6) through (8), shall be deemed part of the substantive law of this state enacted for the expressed legislative purpose of promoting quality patient care through medical peer review activities.

HISTORY:

Laws, 2017, ch. 321, § 1, eff from and after July 1, 2017.

CHAPTER 113.

TOBACCO EDUCATION, PREVENTION AND CESSATION PROGRAM

Sec.	
41-113-1.	Legislative intent.
41-113-3.	Office of Tobacco Control created in State Board of Health; development of comprehensive statewide tobacco education, prevention and cessation program; program components; funding.
41-113-5.	Director; appointment; responsibilities; qualifications; duties; compensation.
41-113-7.	Duties of Office of Tobacco Control.
41-113-9.	Mississippi Tobacco Control Advisory Council created; qualifications and appointment of members; terms of office; vacancies; meetings; compensation.
41-113-11.	Tobacco Control Program Fund created.

§ 41-113-1. Legislative intent.

(1) The Mississippi Legislature recognizes the devastating impact that tobacco use has on the citizens of our state. Tobacco use is the single most preventable cause of death and disease in this country and this state. Each year, thousands of Mississippians lose their lives to diseases caused by tobacco use, and the cost to the state is hundreds of millions of dollars. Tobacco use also is a large burden on the families and businesses of Mississippi. It is therefore the intent of the Legislature that there be developed, implemented and fully funded a comprehensive and statewide tobacco education, prevention and cessation program that is consistent with the Best Practices for Tobacco Control Programs of the federal Centers for Disease Control and Prevention, as periodically amended. It is also the intent of the Legislature that all reasonable efforts be made to maximize the amount of federal funds available for this program.

(2) The goals of the tobacco education, prevention and cessation program include, but are not limited to, the following:

(a) Preventing the initiation of use of tobacco products by youth;

(b) Encouraging and helping smokers to quit and reducing the numbers of youth and adults who use tobacco products;

(c) Assisting in the protection from secondhand smoke;

(d) Supporting the enforcement of laws prohibiting youth access to tobacco products;

(e) Eliminating the racial and cultural disparities related to use of tobacco products; and

(f) Educating the public and changing the cultural perception of use of tobacco products in Mississippi.

HISTORY:

Laws, 2007, ch. 514, § 13, eff from and after passage (approved Mar. 30, 2007).

Editor's Notes —

Laws of 2007, ch. 514, § 22 provides as follows:

"SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act." Laws of 2007, ch. 514 was approved on March 30, 2007.

§ 41-113-3. Office of Tobacco Control created in State Board of Health; development of comprehensive statewide tobacco education, prevention and cessation program; program components; funding.

(1) There is hereby created the Office of Tobacco Control (office) which shall be an administrative division of the State Department of Health.

(2) The Office of Tobacco Control, with the advice of the Mississippi Tobacco Control Advisory Board, shall develop and implement a comprehensive and statewide tobacco education, prevention and cessation program that is consistent with the recommendations for effective program components and funding recommendations in the 1999 Best Practices for Comprehensive Tobacco Control Programs of the federal Centers for Disease Control and Prevention, as those Best Practices may be periodically amended by the Centers for Disease Control and Prevention.

(3) At a minimum, the program shall include the following components, and may include additional components that are contained within the Best Practices for Comprehensive Tobacco Control Programs of the federal Centers for Disease Control and Prevention, as periodically amended, and that based on scientific data and research have been shown to be effective at accomplishing the purposes of this section:

(a) The use of mass media, including paid advertising and other communication tools to discourage the use of tobacco products and to educate people, especially youth, about the health hazards from the use of tobacco products, which shall be designed to be effective at achieving these goals and shall include, but need not be limited to, television, radio, and print advertising, as well as sponsorship, exhibits and other opportunities to raise awareness statewide;

(b) Evidence-based curricula and programs implemented in schools to educate youth about tobacco and to discourage their use of tobacco products, including, but not limited to, programs that involve youth, educate youth about the health hazards from the use of tobacco products, help youth develop skills to refuse tobacco products, and demonstrate to youth how to stop using tobacco products;

(c) Local community programs, including, but not limited to, youth-based partnerships that discourage the use of tobacco products and involve community-based organizations in tobacco education, prevention and cessation programs in their communities;

(d) Enforcement of laws, regulations and policies against the sale or other provision of tobacco products to minors, and the possession of tobacco products by minors;

(e) Programs to assist and help people to stop using tobacco products; and

(f) A surveillance and evaluation system that monitors program accountability and results, produces publicly available reports that review how monies expended for the program are spent, and includes an evaluation of the program's effectiveness in reducing and preventing the use of tobacco products, and annual recommendations for improvements to enhance the program's effectiveness.

(4) All programs or activities funded by the State Department of Health through the tobacco education, prevention and cessation program, whether part of a component described in subsection (2) or an additional component, must be consistent with the Best Practices for Comprehensive Tobacco Control Programs of the federal Centers for Disease Control and Prevention, as periodically amended, and all funds received by any person or entity under any such program or activity must be expended for purposes that are consistent with those Best Practices. The State Department of Health shall exercise sole discretion in determining whether components are consistent with the Best Practices for Comprehensive Tobacco Control Programs of the federal Centers for Disease Control and Prevention.

(5) Funding for the different components of the program shall be apportioned between the components based on the recommendations in the Best Practices for Comprehensive Tobacco Control Programs of the federal Centers for Disease Control and Prevention, as periodically amended, or any additional programs as determined by the State Board of Health to provide adequate program development, implementation and evaluation for effective control of the use of tobacco products. While the office shall develop annual budgets based on strategic planning, components of the program shall be funded using the following areas as guidelines for priority:

(a) School nurses and school programs;
(b) Mass media (counter-marketing);
(c) Cessation programs (including media promotions);
(d) Community programs;
(e) Surveillance and evaluation;
(f) Law enforcement; and
(g) Administration and management; however, not more than five percent (5%) of the total budget may be expended for administration and management purposes.

(6) In funding the components of the program, the State Department of Health may provide funding for health care programs at the University of Mississippi Medical Center and Mississippi Quality Health Center Grants that are related to the prevention and cessation of the use of tobacco products and the treatment of illnesses that are related to the use of tobacco products.

(7) No statewide, district, local, county or municipal elected official shall take part as a public official in mass media advertising under the provisions of this chapter.

HISTORY:

Laws, 2007, ch. 514, § 14; Laws, 2007, ch. 553, § 8; Laws, 2017, ch. 440, § 5, eff from and after passage (approved Apr. 18, 2017).

Editor's Notes —

Laws of 2007, ch. 514, § 22 provides as follows:

"SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act." Laws of 2007, ch. 514 was approved on March 30, 2007.

Amendment Notes —
The 2017 amendment, effective April 18, 2017, inserted "and Mississippi Quality Health Center Grants" in (6).

Cross References —
University of Mississippi Medical Center generally, see §§ 37-115-21 et seq.

§ 41-113-5. Director; appointment; responsibilities; qualifications; duties; compensation.

(1) The Office of Tobacco Control shall be under the management of a director, who shall be appointed by the State Health Officer. The responsibility for implementation of the comprehensive and statewide tobacco education, prevention and cessation program shall be vested in the director. The director shall be an individual who has knowledge and experience in public health, medical care, health-care services, preventive health measures or tobacco use control. The director shall be the administrative officer of the Office of Tobacco Control, and shall perform the duties that are required of him or her by law and such other duties as may be assigned to him or her by the State Board of Health. The director shall receive such compensation as may be fixed by the State Board of Health, subject to the approval of the State Personnel Board.

(2) The State Health Officer may employ such other persons as may be necessary to carry out the provisions of this chapter. The compensation and the terms and conditions of their employment shall be determined by the State Board of Health in accordance with applicable state law and rules and regulations of the State Personnel Board.

HISTORY:
Laws, 2007, ch. 514, § 15, eff from and after passage (approved Mar. 30, 2007).

Editor's Notes —
Laws of 2007, ch. 514, § 22 provides as follows:

"SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act." Laws of 2007, ch. 514 was approved on March 30, 2007.

§ 41-113-7. Duties of Office of Tobacco Control.

The Office of Tobacco Control shall perform the following duties, with the advice of the Mississippi Tobacco Control Advisory Council:

(a) Develop and implement appropriate policies and procedures for the operation of the tobacco education, prevention and cessation program;

(b) Develop and implement a five-year strategic plan for the tobacco education, prevention and cessation program;

(c) Develop and maintain an annual operating budget and oversee fiscal management of the tobacco education, prevention and cessation program;

(d) Execute any contracts, agreements or other documents with any governmental agency or any person, corporation, association, partnership or other organization or entity that are necessary to accomplish the purposes of this chapter;

(e) Receive grants, bequeaths, gifts, donations or any other contributions made to the office to be used for specific purposes related to the goals of this chapter;

(f) Submit an annual report to the Legislature regarding the operation of the office;

(g) Submit to the State Auditor any financial records that are necessary for the Auditor to perform an annual audit of the office as required by law; and

(h) Take any other actions that are necessary to carry out the purposes of this chapter.

HISTORY:

Laws, 2007, ch. 514, § 16, eff from and after passage (approved Mar. 30, 2007).

Editor's Notes —

Laws of 2007, ch. 514, § 22 provides as follows:

"SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act." Laws of 2007, ch. 514 was approved on March 30, 2007.

Cross References —

Mississippi Tobacco Control Advisory Council, see § 41-113-9.

§ 41-113-9. Mississippi Tobacco Control Advisory Council created; qualifications and appointment of members; terms of office; vacancies; meetings; compensation.

(1) There is created the Mississippi Tobacco Control Advisory Council, which shall consist of thirteen (13) members. The thirteen (13) members of the advisory council shall consist of the following:

(a) Four (4) members appointed by the Governor, with one (1) member from a list of three (3) physicians recommended by the Mississippi State Medical Association, one (1) member from a list of three (3) individuals recommended by the Mississippi Chapter of the American Heart Association, and two (2) individuals who are not affiliated with the tobacco industry who possess knowledge, skill, and prior experience in scientifically proven smoking prevention, reduction and cessation programs, health-care services or preventive health measures;

(b) Two (2) members appointed by the Lieutenant Governor, with one (1) member from a list of three (3) nurses recommended by the Mississippi Nurses' Association, and one (1) member from a list of three (3) individuals recommended by the Mississippi Chapter of the American Lung Association;

(c) Two (2) members approved by the Speaker of the House of Representatives, with one (1) member from a list of three (3) social workers recommended by the Mississippi Chapter of the National Association of Social Workers (NASW), and one (1) member from a list of three (3) individuals recommended by the Mississippi Chapter of the American Cancer Society;

(d) The Attorney General, or his or her designee;

(e) The State Superintendent of Public Education, or his or her designee;

(f) The Vice-Chancellor of Health Affairs of the University of Mississippi Medical Center, or his or her designee;

(g) The Dean of the College of Health at the University of Southern Mississippi, or his or her designee; and

(h) The Administrator of the School of Health Sciences of the College of Public Service at Jackson State University, or his or her designee.

(2) The Lieutenant Governor shall appoint one (1) member of the Senate and the Speaker of the House shall appoint one (1) Representative to attend meetings of the Tobacco Control Advisory Council.

(3) For those members that are required to be appointed from lists of individuals recommended by certain nominating groups, if none of the recommended names are acceptable to the appointing official, then the nominating group shall submit another list of three (3) different individuals until an acceptable individual is submitted to the appointing official.

(4) The members who are state officials or university officials shall serve as members for as long as they hold the designated office or university position. The appointed members shall serve for terms that are concurrent with the terms of the appointing officials, or until their successors are appointed and qualified.

(5) Any vacancy in an appointed member position shall be filled within thirty (30) days of the vacancy by the original appointing official, and the individual appointed to fill the vacancy shall meet the same qualifications as required for the former member.

(6) The initial appointments to the advisory council shall be made not later than forty-five (45) days after March 30, 2007, and the first meeting of the advisory council shall be held within sixty (60) days after March 30, 2007, at a time, date and location specified by the State Board of Health.

(7) The advisory council shall annually elect a chairman from among its members. The advisory council shall meet at least quarterly. A quorum for meetings of the advisory council shall be a majority of the voting members of the advisory council. The members of the advisory council shall receive the per diem compensation provided under Section 25-3-69 plus expense reimbursement as provided under Section 25-3-41 for attending meetings and necessary business of the advisory council.

(8) The Mississippi Tobacco Advisory Council shall advise and make recommendations to the State Board of Health regarding rules and regulations promulgated pursuant to this program.

HISTORY:

Laws, 2007, ch. 514, § 17, eff from and after passage (approved Mar. 30, 2007).

Editor's Notes —

Laws of 2007, ch. 514, § 22 provides as follows:

"SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act." Laws of 2007, ch. 514 was approved on March 30, 2007.

Cross References —

Mississippi Tobacco Control Advisory Council to advise Office of Tobacco Control on performance of duties, see § 41-113-7.

§ 41-113-11. Tobacco Control Program Fund created.

(1) There is established in the State Treasury a special fund to be known as the Tobacco Control Program Fund, which shall be comprised of the funds specified in subsection (2) of this section and any other funds that are authorized or required to be deposited into the special fund.

(2) From the tobacco settlement installment payments that the State of Mississippi receives during each calendar year, the sum of Twenty Million Dollars ($20,000,000.00) shall be deposited into the special fund.

(3) Monies in the fund shall be expended solely for the purposes specified in this chapter. None of the funds in the special fund may be transferred to any other fund or appropriated or expended for any other purpose.

(4) All income from the investment of the funds in the Tobacco Control Program Fund shall be credited to the account of the Tobacco Control Program Fund. Any funds in the Tobacco Control Program Fund at the end of a fiscal year shall not lapse into the State General Fund. Any funds appropriated from the Tobacco Control Program Fund that are unexpended at the end of a fiscal year shall lapse into the Tobacco Control Program Fund; however, any funds appropriated from the Tobacco Control Program Fund that are unexpended at the end of fiscal year 2017 shall lapse into the Health Care Expendable Fund.

HISTORY:

Laws, 2007, ch. 514, § 18; Laws, 2015, ch. 471, § 13; Laws, 2017, ch. 440, § 6, eff from and after passage (approved Apr. 18, 2017).

Editor's Notes —

Laws of 2007, ch. 514, § 22 provides as follows:

"SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act." Laws of 2007, ch. 514 was approved on March 30, 2007.

Amendment Notes —

The 2017 amendment, effective April 18, 2017, added "however, any funds... Health Care Expendable Fund" at the end of (4).

Cross References —

Health care expendable fund, see § 43-13-407.

CHAPTER 114.

RESTRICTIONS ON TOBACCO USE IN PUBLIC FACILITIES

Sec.
41-114-1. Use of tobacco by participant or spectator when persons under eighteen years of age are engaged in organized athletic event at public facility prohibited; exceptions, enforcement penalties.

§ 41-114-1. Use of tobacco by participant or spectator when persons under eighteen years of age are engaged in organized athletic event at public facility prohibited; exceptions, enforcement penalties.

(1) As used in this section:

(a) The term "public facility" means any building, gymnasium, athletic field, recreational area or park to which the public is invited, whether there is charge for admission or not.

(b) The term "smoke" or "smoking" means inhaling, exhaling, burning, carrying or otherwise possessing any lighted cigarette, cigar, pipe or any other object or device of any form that contains lighted tobacco or any other smoking product.

(2) During any time that persons under eighteen (18) years of age are engaged in an organized athletic event at a public facility in Mississippi, no participant in or spectator of the athletic event shall smoke in the facility, if the facility is enclosed, or within one hundred (100) feet of the facility, if the facility is not enclosed, except as permitted under subsection (3)(c) of this section.

(3) The person, agency or entity having jurisdiction or supervision over a public facility shall not allow smoking at the facility in violation of this section, and shall use reasonable efforts to prevent smoking at the facility. The person, agency or entity may take the following steps:

(a) Posting appropriate signs informing persons that smoking is prohibited at the public facility.

(b) Securing the removal of persons who smoke at the public facility in violation of this section.

(c) Providing a designated area separate from the fields of activity, to which smoking shall be restricted.

(4) Any person who violates this section shall, upon conviction, be subject to a civil fine and shall be liable as follows:

(a) For a first conviction, a warning;

(b) For a second conviction, a fine of Seventy-five Dollars ($75.00); and

(c) For all later convictions, a fine not to exceed One Hundred Fifty Dollars ($150.00).

Anyone convicted under this section shall be recorded as being guilty of a civil penalty and not for violating a criminal statute. Any such violation shall be triable in any justice court or municipal court with proper jurisdiction.

(5) It is the responsibility of all law enforcement officers and law enforcement agencies of this state to ensure that the provisions of this section are enforced.

(6) If the actions of a person violate both this section and Section 97-32-29, the person shall be liable only under this section or Section 97-32-29, but not under both sections.

HISTORY:
Laws, 2010, ch. 537, § 1, eff from and after July 1, 2010.

CHAPTER 115.

TANNING FACILITIES

Sec.
41-115-1. Use of tanning device at tanning facility by children under eighteen years of age.

§ 41-115-1. Use of tanning device at tanning facility by children under eighteen years of age.

(1) As used in this section:

(a) "Tanning device" means any equipment that emits radiation used for tanning of the skin, such as a sun lamp, tanning booth or tanning bed, and includes any accompanying equipment, such as protective eyewear, timers and handrails; and

(b) "Tanning facility" means any place where a tanning device is used for a fee, membership dues, or any other compensation.

(2) A child under fourteen (14) years of age shall not use a tanning device at a tanning facility unless the child's parent or legal guardian has provided written consent to the tanning facility and the parent or guardian is physically present at the tanning facility during the entire time that the child uses a tanning device at the tanning facility. The parent or guardian shall sign the consent form in the presence of the operator of the tanning facility, and that consent may be revoked at any time by the parent or guardian. The parent or guardian shall state on the consent form his or her relationship with the child and the age of the child. If the parent or guardian revokes the consent, the child shall not use a tanning device at a tanning facility until the child's parent or legal guardian has provided additional written consent in accordance with the requirements of this subsection.

(3) A child fourteen (14) years of age or older but under eighteen (18) years of age shall not use a tanning device at a tanning facility unless the child's parent or legal guardian has provided written consent to the tanning facility. The tanning facility may accept proof of the child's age from any valid source. The parent or guardian shall sign the consent form in the presence of the operator of the tanning facility, and that consent is valid for one (1) year from the date of signature, unless the consent is revoked by the parent or guardian. The consent may be revoked at any time by the parent or guardian. The parent or guardian shall state on the consent form his or her relationship with the child and the age of the child, and shall specify the maximum number of times that the child may use a tanning device at the tanning facility during the one-year period. After the expiration of the one-year period, or if the parent or guardian revokes the consent, the child shall not use a tanning device at a tanning facility until the child's parent or legal guardian has provided additional written consent in accordance with the requirements of this subsection.

(4) Each tanning facility shall:

(a) Maintain the written consent forms of the parents or guardians for a period of not less than two (2) years, and make the forms available to law enforcement personnel for inspection upon request; and

(b) Make written, electronic or digital records showing the dates and duration of use of a tanning device at the tanning facility by children under eighteen (18) years of age, maintain those records for a period of not less than two (2) years, and make the records available to law enforcement personnel for inspection upon request.

(5) This section does not apply to a licensed health-care professional who uses a tanning device for the treatment of patients, if that use is within the lawful scope of practice of the health-care professional.

HISTORY:

Laws, 2009, ch. 446, § 1, eff from and after July 1, 2009.

CHAPTER 117.

NURSE-FAMILY PARTNERSHIP PILOT PROGRAM

Sec.

41-117-1. Legislative findings.
41-117-3. Authorization to establish Nurse-Family Partnership Pilot program; components of program; program goals.
41-117-5. State Health Department and University of Mississippi Medical Center to develop recommendations and strategies to improve health care for premature infants.

§ 41-117-1. Legislative findings.

(1) The Legislature makes the following findings:

(a) The United Health Foundation (UHF) ranks Mississippi fiftieth in overall health, fiftieth in infant mortality with an infant mortality rate of eleven (11) deaths per one thousand (1,000) live births, thirtieth in immunization coverage with only seventy-six and five-tenths percent (76-5/1$_0$%) of children ages nineteen (19) through thirty-five (35) months immunized, and fiftieth in overall child well-being, continuing a series of five (5) consecutive years for the state being last in the nation.

(b) Programs that focus on improved pregnancy outcomes, child health and development and the economic self-sufficiency of the family have been shown to be beneficial to both children and mothers.

(c) Research has shown that the Nurse-Family Partnership program improves pregnancy outcomes by helping women engage in good preventive health practices, including thorough prenatal care from their health care providers, improving their diets, and reducing their use of cigarettes, alcohol and illegal substances.

(d) The Nurse-Family Partnership program also has been shown to improve child health and development by helping parents provide responsible and competent care, and improve the economic self-sufficiency of the family by helping parents develop a vision for their own future, plan future pregnancies, continue their education and find work.

(2) The Legislature declares that establishing a Nurse-Family Partnership Pilot program in Mississippi would be very beneficial to improving pregnancy outcomes, child health and development and the economic self-sufficiency of the family in this state.

HISTORY:

Laws, 2010, ch. 485, § 1, eff from and after July 1, 2010.

§ 41-117-3. Authorization to establish Nurse-Family Partnership Pilot program; components of program; program goals.

(1) The State Board of Health is authorized, in its discretion, to establish a Nurse-Family Partnership Pilot program in the State Department of Health, in conjunction with the Nurse-Family Partnership National Service Office. The

pilot program shall be conditioned upon the availability of funds obtained for such purpose from public or private services. The program is an evidence-based, voluntary, nurse home visitation program that improves the health and well-being of low-income, first-time pregnant women and their children. The Nurse-Family Partnership Pilot program includes, but is not limited to, the following components:

(a) Eligibility criteria for the program include first-time pregnancy before the twenty-eighth week of gestation, and being eligible for Medicaid.

(b) Registered nurses, by making home visits to pregnant women, provide education, support and guidance regarding pregnancy and maternal health, child health and development, parenting, the mother's life course development, and identifying and using family and community supports.

(c) Home visits begin before the twenty-eighth week of pregnancy, and continue on a weekly or biweekly basis until the child turns two (2) years old.

(2) The goals of the Nurse-Family Partnership Pilot program are to:

(a) Improve pregnancy outcomes by helping women engage in good preventive health practices, including thorough prenatal care from their health care providers, improving their diets, and reducing their use of cigarettes, alcohol and illegal substances.

(b) Improve child health and development by helping parents provide responsible and competent care.

(c) Improve the economic self-sufficiency of the family by helping parents develop a vision for their own future, plan future pregnancies, continue their education and find work.

HISTORY:
Laws, 2010, ch. 485, § 2, eff from and after July 1, 2010.

§ 41-117-5. State Health Department and University of Mississippi Medical Center to develop recommendations and strategies to improve health care for premature infants.

(1) In addition to implementing the Nurse-Family Partnership Pilot program, the State Health Department jointly with the University of Mississippi Medical Center may:

(a) Develop standards of care for premature infants born less than thirty-seven (37) weeks gestational age to help improve their access to and quality of care in their first year of life.

(b) Examine and make recommendations to improve hospital discharge and follow-up care procedures to promote coordinated processes as premature infants leave the hospital from either a Level 1 (well baby nursery), Level 2 (step down or transitional nursery) or Level 3 (neonatal intensive care unit) unit and transition to follow-up care by a health care provider in the community.

(c) Urge hospitals serving infants eligible for medical assistance and child health assistance to report to the state the causes and incidence of all rehospitalizations of infants born premature at less than thirty-seven (37) weeks gestational age within their first six (6) months of life.

(d) Develop recommendations for quality measures to assess health care outcomes of premature infants.

(e) Develop recommendations to ensure access to preventive health care therapies to protect premature infants from common infectious diseases, including respiratory syncytial virus.

(f) Measurably improve the quality of care for premature infants through advocacy of evidenced-based approaches and proposals for legislation, regulation and public policy change.

(2) The State Board of Health program may:

(a) Review relevant evidence-based research regarding premature infant health care and seek input from public and private entities currently associated with treatment of prematurity.

(b) Develop recommendations and strategies to improve health care for premature infants by:

(i) Developing standards of care for premature infants born less than thirty-seven (37) weeks gestational age pursuant to Section 41-117-3;

(ii) Coordinating information among appropriate professional and advocacy organizations on measures to improve health care for infants born premature; and

(iii) Issuing findings of goals, objectives, strategies and tactics to improve premature infant health care in Mississippi.

HISTORY:

Laws, 2010, ch. 485, § 3, eff from and after July 1, 2010.

CHAPTER 119.

HEALTH INFORMATION TECHNOLOGY ACT

Sec.

41-119-1. Short title [Repealed effective July 1, 2019].
41-119-3. Mississippi Health Information Network to be public-private partnership for benefit of citizens of Mississippi [Repealed effective July 1, 2019].
41-119-5. Mississippi Health Information Network created; board of directors membership, terms, bylaws [Repealed effective July 1, 2019].
41-119-7. Purposes and duties of MS-HIN; powers of MS-HIN board and executive director [Repealed effective July 1, 2019].
41-119-9. Immunity for board members [Repealed effective July 1, 2019].
41-119-11. Property rights in information, data, or processes or software developed, designed or purchased [Repealed effective July 1, 2019].
41-119-13. Confidentiality of health care information and data in network [Repealed effective July 1, 2019].
41-119-15. Definitions [Repealed effective July 1, 2019].
41-119-17. State agencies required to provide MS-HIN with certain information before acquiring any health information technology [Repealed effective July 1, 2019].
41-119-19. Legislative Audit Committee to make certain reports regarding development of electronic health information [Repealed effective July 1, 2019].
41-119-21. Repeal of Sections 41-119-1 through 41-119-21.

§ 41-119-1. Short title [Repealed effective July 1, 2019].

This chapter shall be known and may be cited as the "Health Information Technology Act."

HISTORY:

Laws, 2010, ch. 545, § 1; brought forward without change, Laws, 2014, ch. 466, § 1, eff from and after July 1, 2014.

Editor's Notes —

For repeal of this section, see § 41-119-21.

§ 41-119-3. Mississippi Health Information Network to be public-private partnership for benefit of citizens of Mississippi [Repealed effective July 1, 2019].

The Mississippi Health Information Network is a public-private partnership for the benefit of all of the citizens of this state.

HISTORY:

Laws, 2010, ch. 545, § 2; brought forward without change, Laws, 2014, ch. 466, § 2, eff from and after July 1, 2014.

Editor's Notes —

For repeal of this section, see § 41-119-21.

§ 41-119-5. Mississippi Health Information Network created; board of directors membership, terms, bylaws [Repealed effective July 1, 2019].

(1) The Mississippi Health Information Network is established, and is referred to in this chapter as the "MS-HIN."

(2) The MS-HIN shall be governed by a board of directors (MS-HIN board) consisting of eleven (11) members. The membership of the MS-HIN board shall reasonably reflect the public-private and diverse nature of the MS-HIN.

(3) The membership of the MS-HIN board of directors shall consist of the following:

(a) The Governor shall appoint one (1) member of the MS-HIN board of directors, who shall be a representative of a health insurance carrier in Mississippi with knowledge of information technology, to serve an initial term of three (3) years;

(b) The State Board of Health shall appoint one (1) member of the MS-HIN board of directors, who shall be a representative of a Mississippi hospital with knowledge of information technology, to serve an initial term of three (3) years;

(c) The Mississippi State Medical Association shall appoint a member of the MS-HIN board of directors, who shall be a licensed physician, to serve an initial term of three (3) years;

(d) The Primary Health Care Association shall appoint a member of the MS-HIN board of directors to serve an initial term of one (1) year;

(e) The Delta Health Alliance shall appoint a member of the MS-HIN board of directors to serve an initial term of four (4) years;

(f) The Information and Quality Health Care-Mississippi Coastal Health Information Exchange (MCHIE) shall appoint a member of the MS-HIN board of directors to serve an initial term of one (1) year;

(g) The State Board of Health shall appoint a member of the MS-HIN board of directors who shall be an employee of the State Department of Health to serve an initial term of one (1) year;

(h) The Mississippi Board of Information Technology Services shall appoint a member of the MS-HIN board of directors to serve an initial term of two (2) years;

(i) The Mississippi Board of Mental Health shall appoint a member of the MS-HIN board of directors who shall be an employee of the Department of Mental Health to serve an initial term of four (4) years;

(j) The University of Mississippi Medical Center shall appoint a member of the MS-HIN board of directors to serve an initial term of two (2) years; and

(k) The Division of Medicaid shall appoint a member of the MS-HIN board of directors who shall be an employee of the Division of Medicaid to serve an initial term of two (2) years.

Initial terms shall expire on June 30 of the appropriate year, and subsequent appointments shall be made by the appointing entity for terms of four (4) years. Members may be reappointed.

(4) No state officer or employee appointed to the MS-HIN board or serving in any other capacity for the MS-HIN board will be construed to have resigned from public office or employment by reason of that appointment or service.

(5) The chairperson of the MS-HIN board shall be elected by a majority of the members appointed to the MS-HIN board.

(6) The MS-HIN board is authorized to conduct its business by a majority of a quorum. A quorum is six (6) members of the MS-HIN board.

(7) The MS-HIN board may adopt bylaws for its operations, including, but

not limited to, the election of other officers, the terms of officers, and the creation of standing and ad hoc committees.

HISTORY:

Laws, 2010, ch. 545, § 3; brought forward without change, Laws, 2014, ch. 466, § 3, eff from and after July 1, 2014.

Editor's Notes —

For repeal of this section, see § 41-119-21.

Laws of 2018, ch. 400, § 1, effective March 19, 2018, provides:

"SECTION 1: The Legislature finds and declares:

"(a) A rare disease is defined as a disease that affects fewer than two hundred thousand (200,000) people in the United States. Rare diseases are sometimes called orphan diseases. There are seven thousand (7,000) known rare diseases affecting approximately thirty million (30,000,000) men, women and children in the United States;

"(b) The exact cause for many rare diseases remains unknown. However, eighty percent (80%) of rare diseases are genetic in origin and can be linked to mutations in a single gene or in multiple genes. Those diseases are referred to as genetic diseases. Genetic disease can be passed down from generation to generation, explaining why certain rare diseases run in families. It is also estimated that about half of all rare diseases affect children;

"(c) A person suffering with a rare disease in Mississippi faces a wide range of challenges, including, but not limited to: delays in obtaining a diagnosis; misdiagnosis; shortage of medical specialists who are familiar with, and can provide treatment for, rare diseases; prohibitive cost of treatment; and the inability to access therapies and medication that are used by doctors to treat rare diseases but have not been approved by the federal Food and Drug Administration (FDA) for that specific purpose;

"(d) In recent years, researchers have made considerable progress in developing diagnostic tools and treatment protocols for, and in discovering ways to prevent a variety of, rare diseases. However, much more remains to be done in the areas of rare disease research and the search for and development of new therapeutics; and

"(e) It would be very beneficial to persons in Mississippi with rare diseases and to researchers who are trying to find ways to treat or prevent the occurrence of rare diseases to examine the existing data on rare diseases in Mississippi and compile it in a detailed report, which then could be analyzed and used to educate medical professionals, government agencies and the public about rare diseases as an important public health issue, and to encourage and fund research in the development of new treatments for rare diseases."

Laws of 2018, ch. 400, § 2, effective March 19, 2018, provides:

"SECTION 2. The University of Mississippi Medical Center (UMMC) as the lead agency, together with the State Department of Health, the Division of Medicaid and the Mississippi Health Information Network (MS-HIN), shall cooperate with each other in preparing a comprehensive report on the state of rare diseases in Mississippi, including the incidence of rare diseases in the state, the status of the rare disease community, and treatment and services provided to persons with rare diseases in the state. The State Department of Health, the Division of Medicaid and the MS-HIN shall provide to UMMC and each other all claims data and patient encounter data relating to the diagnosis and treatment of rare diseases and all related research and documentation relating to rare diseases, which shall be compiled, examined and analyzed in the report. The report shall be presented to the Chairs of the House Public Health and Human Services Committee, Senate Public Health and Welfare Committee, and the House and Senate Medicaid Committees not later than December 1, 2019."

§ 41-119-7. Purposes and duties of MS-HIN; powers of MS-HIN board and executive director [Repealed effective July 1, 2019].

(1) In furtherance of the purposes of this chapter, the MS-HIN shall have the following duties:

(a) Initiate a statewide health information network to:

(i) Facilitate communication of patient clinical and financial information;

(ii) Promote more efficient and effective communication among multiple health care providers and payers, including, but not limited to, hospitals, physicians, nonphysician providers, third-party payers, self-insured employers, pharmacies, laboratories and other health care entities;

(iii) Create efficiencies by eliminating redundancy in data capture and storage and reducing administrative, billing and data collection costs;

(iv) Create the ability to monitor community health status;

(v) Provide reliable information to health care consumers and purchasers regarding the quality and cost-effectiveness of health care, health plans and health care providers; and

(vi) Promote the use of certified electronic health records technology in a manner that improves quality, safety, and efficiency of health care delivery, reduces health care disparities, engages patients and families, improves health care coordination, improves population and public health, and ensures adequate privacy and security protections for personal health information;

(b) Develop or design other initiatives in furtherance of its purpose; and

(c) Perform any and all other activities in furtherance of its purpose.

(2) The MS-HIN board is granted all incidental powers to carry out its purposes and duties, including the following:

(a) To appoint an executive director, who will serve at the will and pleasure of the MS-HIN board. The qualifications and employment terms for the executive director shall be determined by the MS-HIN board;

(b) To adopt, modify, repeal, promulgate, and enforce rules and regulations to carry out the purposes of the MS-HIN;

(c) To establish a process for hearing and determining case decisions to resolve disputes under this chapter or the rules and regulations promulgated under this chapter among participants, subscribers or the public;

(d) To enter into, and to authorize the executive director to execute contracts or other agreements with any federal or state agency, any public or private institution, or any individual in carrying out the provisions of this chapter; and

(e) To discharge other duties, responsibilities, and powers as are necessary to implement the provisions of this chapter.

(3) The executive director shall have the following powers and duties:

(a) To employ qualified professional personnel as required for the operation of the MS-HIN and as authorized by the MS-HIN board;

(b) To administer the policies of the MS-HIN board; and

(c) To supervise and direct all administrative and technical activities of the MS-HIN.

(4) The MS-HIN shall have the power and authority to accept appropriations, grants and donations from public or private entities and to charge reasonable fees for its services. The revenue derived from grants, donations, fees and other sources of income shall be deposited into a special fund that is created in the State Treasury and earmarked for use by the MS-HIN in carrying out its duties under this chapter.

HISTORY:

Laws, 2010, ch. 545, § 4; brought forward and amended, Laws, 2014, ch. 466, § 4, eff from and after July 1, 2014.

Editor's Notes —

For repeal of this section, see § 41-119-21.

§ 41-119-9. Immunity for board members [Repealed effective July 1, 2019].

(1) All members of the MS-HIN board shall not be subject to and are immune from claim, suit, liability, damages or any other recourse, civil or criminal, arising from any act or proceeding, decision or determination undertaken, performed or reached in good faith and without malice by any such member or members acting individually or jointly in carrying out the responsibilities, authority, duties, powers and privileges of the offices conferred by law upon them under this chapter, or any other state law, or duly adopted rules and regulations of the aforementioned committees, good faith being presumed until proven otherwise, with malice required to be shown by a complainant. All employees and staff of the MS-HIN, whether temporary or permanent, shall enjoy the same rights and privileges concerning immunity from suit otherwise enjoyed by state employees under the Mississippi Constitution of 1890 and Section 11-46-1 et seq.

(2) The MS-HIN is not a health care provider and is not subject to claims under Sections 11-1-58 through 11-1-62. No person who participates in or subscribes to the services or information provided by the MS-HIN shall be liable in any action for damages or costs of any nature, in law or equity, that result solely from that person's use or failure to use MS-HIN information or data that were imputed or retrieved in accordance with the rules or regulations of the MS-HIN. In addition, no person will be subject to antitrust or unfair competition liability based on membership or participation in the MS-HIN, which provides an essential governmental function for the public health and safety.

HISTORY:

Laws, 2010, ch. 545, § 5; brought forward without change, Laws, 2014, ch. 466, § 5, eff from and after July 1, 2014.

Editor's Notes —

For repeal of this section, see § 41-119-21.

§ 41-119-11. Property rights in information, data, or processes or software developed, designed or purchased [Repealed effective July 1, 2019].

(1) All persons providing information and data to the MS-HIN shall retain a property right in that information or data, but grant to the other participants or subscribers a nonexclusive license to retrieve and use that information or data in accordance with the rules or regulations promulgated by the MS-HIN board and in compliance with the provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

(2) Patients desiring to obtain a copy of their personal medical record or information are to request the copy from the health care provider who is the

primary source of the information, and the MS-HIN shall not be required to provide this information directly to the patient.

(3) All processes or software developed, designed or purchased by the MS-HIN shall remain its property subject to use by participants or subscribers in accordance with the rules and regulations promulgated by the MS-HIN board.

HISTORY:

Laws, 2010, ch. 545, § 6; brought forward without change, Laws, 2014, ch. 466, § 6, eff from and after July 1, 2014.

Editor's Notes —

For repeal of this section, see § 41-119-21.

§ 41-119-13. Confidentiality of health care information and data in network [Repealed effective July 1, 2019].

(1) The MS-HIN board shall by rule or regulation ensure that patient specific health information be disclosed only in accordance with the provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, which governs the electronic transmission of that information.

(2) Patient specific health information and data of the MS-HIN shall not be subject to the Federal Freedom of Information Act, Mississippi Open Records Act (Section 25-61-1 et seq.) nor to subpoena by any court. That information may only be disclosed by consent of the patient or in accordance with the MS-HIN board's rules, regulations or orders.

(3) Notwithstanding any conflicting statute, court rule or other law, the data in the network shall be confidential and shall not be subject to discovery or introduction into evidence in any civil action. However, information and data otherwise discoverable or admissible from original sources are not to be construed as immune from discovery or use in any civil action merely because they were provided to the MS-HIN.

(4) Submission of information to and use of information by the State Department of Health shall be considered a permitted disclosure for uses and disclosures required by law and for public health activities under the Health Insurance Portability and Accountability Act and the privacy rules promulgated under that act.

(5) Any violation of the rules or regulations regarding access or misuse of the MS-HIN health information or data shall be reported to the Office of the Attorney General, and shall be subject to prosecution and penalties under state or federal law.

HISTORY:

Laws, 2010, ch. 545, § 7; brought forward without change, Laws, 2014, ch. 466, § 7, eff from and after July 1, 2014.

Editor's Notes —

For repeal of this section, see § 41-119-21.

This section was brought forward without change by Chapter 466, § 7, Laws of 2014, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not printed in this supplement.

Federal Aspects—

Federal Freedom of Information Act, see 5 USCS §§ 522 et seq.

§ 41-119-15. Definitions [Repealed effective July 1, 2019].

For the purposes of this chapter, the following terms shall be defined as provided in this section:

(a) "Electronic health records" or "EHR" means electronically maintained clinical and demographic information, used by a meaningful EHR user.

(b) "Health information technology" or "HIT" means the equipment, software and networks to be used by a meaningful EHR user.

(c) "Acquisition" of HIT systems or other computer or telecommunications equipment or services means the purchase, lease, rental or acquisition in any other manner of HIT systems or any other computer or telecommunications equipment or services used exclusively for HIT.

(d) "Meaningful EHR user" means an eligible professional or eligible hospital that, during the specified reporting period, demonstrates meaningful use of certified EHR technology in a form and manner consistent with certain objectives and measures presented in applicable federal regulations as amended or adopted. These objectives and measures shall include the use of certified EHR.

(e) "Entity" means and includes all the various state agencies, officers, departments, boards, commissions, offices and institutions of the state, but does not include any agency financed entirely by federal funds.

HISTORY:

Laws, 2010, ch. 545, § 8; brought forward without change, Laws, 2014, ch. 466, § 8, eff from and after July 1, 2014.

Editor's Notes —

For repeal of this section, see § 41-119-21.

§ 41-119-17. State agencies required to provide MS-HIN with certain information before acquiring any health information technology [Repealed effective July 1, 2019].

(1) Before the acquisition of any HIT system, an entity shall provide MS-HIN, at a minimum, description, purpose and intent of the proposed service or system, including a description and specifications of the ability to connect to MS-HIN.

(2) Where existing entities can be used to provide the proposed HIT system, in whole or in part, the submission shall include letters of commitment, memoranda of agreements, or other supporting documentation.

(3) The MS-HIN shall review proposals for acquisition of HIT systems for the purposes contained in Section 41-119-7, and provide guidance to entities including collaborative opportunities with MS-HIN members.

(4) Any acquisition of an HIT system that was approved by the Mississippi Department of Technology Services before April 28, 2010, is exempt from the requirements of Section 41-119-15 and this section.

HISTORY:

Laws, 2010, ch. 545, § 9; brought forward without change, Laws, 2014, ch. 466, § 9, eff from and after July 1, 2014.

Editor's Notes —
For repeal of this section, see § 41-119-21.

§ 41-119-19. Legislative Audit Committee to make certain reports regarding development of electronic health information [Repealed effective July 1, 2019].

The Legislative Audit Committee (PEER) shall develop and make a report to the Chairmen of the Senate and House Public Health and Welfare/Medicaid Committees regarding the following electronic health records (EHR) system items:

(a) Evaluate the Request for Proposals (RFP) for the implementation and operations services for the Division of Medicaid and the University Medical Center electronic health records system and e-prescribing system for providers;

(b) Evaluate the proposed expenditures of the Mississippi Division of Medicaid (DOM) and the University Medical Center (UMC) regarding electronic health information;

(c) Evaluate the use of American Recovery and Reinvestment Act (ARRA) funds for electronic health records system implementation in the State of Mississippi; and

(d) Evaluate the progress in implementing the electronic health records system in the State of Mississippi.

The PEER Committee shall make its report on or before December 1, 2014, including any recommendations for legislation.

HISTORY:
Laws, 2010, ch. 545, § 10; Laws, 2014, ch. 466, § 10, eff from and after July 1, 2014.

Editor's Notes —
For repeal of this section, see § 41-119-21.

§ 41-119-21. Repeal of Sections 41-119-1 through 41-119-21.

Sections 41-119-1 through 41-119-21 shall stand repealed on July 1, 2019.

HISTORY:
Laws, 2010, ch. 545, § 11; Laws, 2014, ch. 466, § 11, eff from and after July 1, 2014.

CHAPTER 121.

REQUIREMENTS FOR ADVERTISEMENTS FOR HEALTH CARE SERVICES

Sec.

41-121-1. Title [Repealed effective July 1, 2020].
41-121-3. Purpose [Repealed effective July 1, 2020].
41-121-5. Definitions [Repealed effective July 1, 2020].
41-121-7. Requirements [Repealed effective July 1, 2020].
41-121-9. Violations and enforcement [Repealed effective July 1, 2020].
41-121-11. Repeal of this chapter.

§ 41-121-1. Title [Repealed effective July 1, 2020].

This chapter shall be known and may be cited as “The Patient’s Right to Informed Health Care Choices Act.”

HISTORY:

Laws, 2012, ch. 409, § 1; reenacted without change, Laws, 2016, ch. 419, § 1, eff from and after July 1, 2016.

Editor’s Notes —

For repeal of this section, see § 41-121-11.

§ 41-121-3. Purpose [Repealed effective July 1, 2020].

The Legislature finds and declares that:

(a) There are a multitude of professional degrees using the term “doctor,” including Medical Doctor (M.D.); Doctor of Osteopathic Medicine (D.O.); Doctor of Dental Surgery (D.D.S.); Doctor of Podiatric Medicine (D.P.M.); Doctor of Optometry (O.D.); Doctor of Chiropractic (D.C.); Doctor of Nursing Practice (D.N.P.); Doctor of Pharmacy (Pharm.D.); and other designations which may be used by health care practitioners.

(b) Choosing a health care provider is one of the most important decisions a patient makes, which should be supported by full disclosure from their health care provider. There are differences regarding the training and qualifications required to earn the professional degrees described in and subject to this chapter. These differences often concern the training and skills necessary to correctly detect, diagnose, prevent and treat serious health care conditions.

(c) There is a compelling state interest in patients being promptly and clearly informed of the actual training and qualifications of their health care practitioners who provide health care services. This chapter aims to provide public protection against potentially misleading and deceptive health care advertising that cause patients to have undue expectations regarding their medical treatments and outcomes.

HISTORY:

Laws, 2012, ch. 409, § 2; reenacted without change, Laws, 2016, ch. 419, § 2, eff from and after July 1, 2016.

Editor’s Notes —

For repeal of this section, see § 41-121-11.

§ 41-121-5. Definitions [Repealed effective July 1, 2020].

For the purposes of this chapter:

(a) "Advertisement" means any communication or statement, whether printed, electronic or oral, that names the health care practitioner in relation to his or her practice, profession, or institution in which the individual is employed, volunteers or otherwise provides health care services. This includes business cards, letterhead, patient brochures, email, Internet, audio and video, and any other communication or statement used in the course of business or any other definition provided by regulations of the licensing board of proper jurisdiction.

(b) "Deceptive" or "misleading" includes, but is not limited to, any advertisement or affirmative communication or representation that misstates, falsely describes, holds out or falsely details the health care practitioner's profession, skills, training, expertise, education, board certification or licensure as determined by each respective licensing board.

(c) "Health care practitioner" means any person who engages in acts that are the subject of licensure or regulation. Categories of health care practitioner include:

(i) Practitioners of all opathic medicine, signified by the letters "M.D." or the words surgeon, medical doctor, or doctor of medicine by a person licensed to practice medicine and surgery.

(ii) Practitioners of osteopathic medicine, signified by the letters "D.O." or the words surgeon, osteopathic surgeon, osteopath, doctor of osteopathy, or doctor of osteopathic medicine.

(iii) Practitioners of nursing, signified by the letters "D.N.P.," "N.P.," "R.N.," "L.P.N.," "C.R.N.A.," or any other commonly used signifier to denote a doctorate of nursing practice, nurse practitioner, registered nurse, licensed practical nurse, or certified registered nurse anesthetist, respectively, as appropriate to signify the appropriate degree of licensure and degree earned from a regionally accredited institution of higher education in the appropriate field of learning.

(iv) Practitioners of podiatry, signified by the letters "D.P.M." or the words podiatrist, doctor of podiatry, podiatric surgeon, or doctor of podiatric medicine.

(v) Practitioners of chiropractic, signified by the letters "D.C." or the words chiropractor, doctor of chiropractic or chiropractic physician.

(vi) Practitioners of dentistry, signified by the letters "D.D.S." or "D.M.D.," as appropriate, or the words dentist, doctor of dental surgery, or doctor of dental medicine, as appropriate.

(vii) Practitioners of optometry, signified by the letters "O.D." or the words optometrist or doctor of optometry.

(viii) Practitioners of pharmacy, signified by the letters "BSc.Pharm" or "Pharm.D." or the words pharmacists or doctor of pharmacy.

(ix) Physician assistants, signified by the letters "P.A." or the words physician assistant.

(x) Medical assistants, signified by the letters "M.A." or the words medical assistant.

(xi) Practitioners of audiology, signified by the letters "Au.D.," "Sc.D." or "Ph.D.," or the words audiologist or doctor of audiology.

(xii) Psychologists, therapists, speech-language pathologists, counselors, or any other health care practitioner not covered under this section, including, but not limited to, those signified by the letters "Ph.D.," "Ed.D.," "P.T.," "M.P.T." or "Psy.D.," or "Sc.D.," as appropriate to signify the appropriate degree of licensure and degree earned from a regionally accredited institution of higher education in the appropriate field of learning.

(d) "Licensee" means a health care practitioner who holds an active license with the licensing board governing his or her practice in this state.

HISTORY:

Laws, 2012, ch. 409, § 3; reenacted without change, Laws, 2016, ch. 419, § 3, eff from and after July 1, 2016.

Editor's Notes —

For repeal of this section, see § 41-121-11.

JUDICIAL DECISIONS

1. Chiropractors.

Patient's Right to Informed Health Care Choices Act (Act), codified as this Chapter 121, Title 41, did not repeal Miss. Code Ann. § 73-6-25(1)(a) by making a chiropractor tell patients of the chiropractor's other certifications because the other certifications were not licenses the Act intended to reveal. Barlow v. Miss. State Bd. of Chiropractic Examiners, 233 So. 3d 223, 2017 Miss. LEXIS 209 (Miss. 2017).

§ 41-121-7. Requirements [Repealed effective July 1, 2020].

(1) An advertisement for health care services that names a health care practitioner must identify the type of license held according to the definitions under this chapter. The advertisement shall be free from any and all deceptive or misleading information.

(2) A health care practitioner providing health care services in this state must conspicuously post in their office and affirmatively communicate the practitioner's specific licensure as defined under this chapter. This shall consist of the following: The health care practitioner shall display in his or her office a writing that clearly identifies the type of license held by the health care practitioner. The writing must be of sufficient size so as to be visible and apparent to all current and prospective patients.

(3) A health care practitioner who practices in more than one (1) office shall be required to comply with these requirements in each practice setting.

(4) Health care practitioners working in nonpatient care settings, and who do not have any direct patient care interactions, are not subject to the provisions of this chapter.

HISTORY:

Laws, 2012, ch. 409, § 4; reenacted without change, Laws, 2016, ch. 419, § 4, eff from and after July 1, 2016.

Editor's Notes —

For repeal of this section, see § 41-121-11.

JUDICIAL DECISIONS

1. Chiropractors.

Patient's Right to Informed Health Care Choices Act (Act), codified as this Chapter 121, Title 41, did not repeal Miss. Code Ann. § 73-6-25(1)(a) by making a chiropractor tell patients of the chiropractor's other certifications because the other certifications were not licenses the Act intended to reveal. Barlow v. Miss. State Bd. of Chiropractic Examiners, 233 So. 3d 223, 2017 Miss. LEXIS 209 (Miss. 2017).

§ 41-121-9. Violations and enforcement [Repealed effective July 1, 2020].

(1) Failure to comply with any provision under this section shall constitute a violation under this chapter.

(2) Knowingly aiding, assisting, procuring, employing or advising any unlicensed person or entity to practice or engage in acts contrary to the health care practitioner's degree of licensure shall constitute a violation under this chapter.

(3) Delegating or contracting for the performance of health care services by a health care practitioner when the licensee delegating or contracting for performance knows, or has reason to know, the person does not have the required authority under the person's licensure, shall constitute a violation under this chapter.

(4) Violations of this chapter relating to practitioners of pharmacy shall be regulated in accordance with the restrictions on the use of business name for pharmacists in Section 73-21-109.

(5) Each day that this chapter is violated shall constitute a separate offense and shall be punishable as such.

(6) Any health care practitioner who violates any provision under this chapter is guilty of unprofessional conduct and subject to disciplinary action under the appropriate licensure provisions governing the respective health care practitioner.

(7) Any and all fees and other amounts billed to and paid by the patient may be effectively rescinded and refunded. This includes third parties contracted to collect fees on behalf of the health care practitioner, the health care practitioner's employer, or other entity contracting with the health care practitioner as determined by each respective licensing board.

(8) The imposition of professional sanctions, administrative fees or other disciplinary actions shall be publicly reported by the governmental administrative body of proper jurisdiction at its discretion.

(9) Notwithstanding the imposition of any penalty, a professional licensing board or other administrative agency with jurisdiction may seek an injunction or other legal means as appropriate against a person or entity violating this chapter as determined by each respective licensing board.

(10) A licensing board may only enforce violations of this chapter with licensees that are subject to its jurisdiction.

HISTORY:

Laws, 2012, ch. 409, § 5; reenacted without change, Laws, 2016, ch. 419, § 5, eff from and after July 1, 2016.

Editor's Notes —
For repeal of this section, see § 41-121-11.

§ 41-121-11. Repeal of this chapter.

Sections 41-121-1 through 41-121-9 shall stand repealed on July 1, 2020.

HISTORY:
Laws, 2012, ch. 409, § 6; Laws, 2016, ch. 419, § 6, eff from and after July 1, 2016.

CHAPTER 123.

OFFICE OF MISSISSIPPI PHYSICIAN WORKFORCE

Sec.
41-123-1. Office of Mississippi Physician Workforce established; purpose, staffing, duties.
41-123-3. Mississippi Physician Workforce Advisory Board; composition, appointments, meetings.
41-123-5. Powers and duties of Office of Mississippi Physician Workforce.
41-123-7. Policies and procedures for awarding state financial support for creation of family medicine residency programs.
41-123-9. Adherence by recipient to policies and practices to continue receiving state financial support; authorized uses of financial support.
41-123-11. Residency programs established with state financial support to accept students from accredited allopathic and osteopathic medical schools.
41-123-13. Funding for operation of Office of Mississippi Physician Workforce.

§ 41-123-1. Office of Mississippi Physician Workforce established; purpose, staffing, duties.

There is established the Office of Mississippi Physician Workforce within the University of Mississippi Medical Center (UMMC) for the purpose of overseeing the physician workforce development and needs, both in numbers and distribution, of the State of Mississippi. The office shall have a director who must be a physician licensed in the State of Mississippi. In addition, the office shall have a researcher to assist the director in collecting and analyzing data concerning the physician workforce needs of Mississippi and other necessary staff to assist in its work. The office shall have the following duties, at a minimum:

(a) Assessing the current numbers, ages, types of practice, hospital affiliations, and geographic distribution of physicians in each medical specialty in Mississippi;

(b) Assessing the current and future physician workforce needs of the State of Mississippi;

(c) Assisting in the creation and/or support of Accreditation Council for Graduate Medical Education (ACGME) accredited GME training programs in the State of Mississippi based on needs analysis and criteria established by the office and the advisory board while maintaining a strong and continued priority focus on family medicine. This support may include the awarding of state financial assistance as available, for the creation or support of family medicine residencies and other GME programs approved by the advisory board;

(d) Encouraging the development of an adequate and geographically distributed physician workforce in all specialties for the State of Mississippi with an evolving strategic plan; and

(e) Providing an annual report to the Governor, the Legislature, the State Board of Health, and the Board of Trustees of State Institutions of Higher Learning on the current status of the physician workforce and training programs in Mississippi.

HISTORY:

Laws, 2012, ch. 472, § 1; Laws, 2017, ch. 314, § 1, eff from and after July 1, 2017.

Amendment Notes —

The 2017 amendment rewrote (c), which read: "Supporting the creation of Family Medicine residency programs in the State of Mississippi, including the awarding of state financial support for the creation of those programs."

§ 41-123-3. Mississippi Physician Workforce Advisory Board; composition, appointments, meetings.

(1) The Office of Mississippi Physician Workforce shall be administered by UMMC. An advisory board shall be created to assist UMMC in achieving the purpose of this chapter to be known as the "Mississippi Physician Workforce Advisory Board." The advisory board shall be composed of the following members:

(a) The Chairman of the State Board of Health.

(b) The State Health Officer.

(c) Two (2) physicians appointed by and from the membership of the Mississippi State Medical Association for a term of three (3) years. Any member appointed under this paragraph may be reappointed for two (2) additional terms.

(d) Two (2) physicians appointed by and from the membership of the Mississippi Academy of Family Physicians for a term of three (3) years. Any member appointed under this paragraph may be reappointed for two (2) additional terms.

(e) One (1) physician appointed by and from the membership of each of the following organizations, whose terms shall be for three (3) years and who may be reappointed for two (2) additional terms:

(i) Mississippi Osteopathic Medical Association;

(ii) Mississippi Chapter, American College of Physicians;

(iii) Mississippi Chapter, American Academy of Pediatrics;

(iv) Mississippi Chapter, American College of OB-GYN; and

(v) Mississippi Medical and Surgical Association.

(f) Two (2) physician designees of the Dean of the University of Mississippi School of Medicine, who will serve at the will and pleasure of the dean. One (1) of the members appointed under this paragraph must be responsible for Graduate Medical Education at the University of Mississippi School of Medicine.

(g) The Chair of the Department of Family Medicine at the University of Mississippi School of Medicine.

(h) A member of the State Board of Medical Licensure, who will serve at the will and pleasure of that board.

(i) One (1) physician designee of the Dean of the William Carey School of Medicine, who will serve at the will and pleasure of the dean.

(j) One (1) representative of the Mississippi Economic Council appointed by the president of the council, and who will serve at the will and pleasure of the president.

(k) One (1) representative of the Mississippi Development Authority appointed by the executive director of the authority, who will serve at the will and pleasure of the executive director.

(*l*) One (1) representative of the Mississippi Hospital Association, who will serve at the will and pleasure of the association.

(m) Two (2) representatives of the Mississippi Primary Health Care Association, who will serve at the will and pleasure of the association.

(2) Vacancies on the advisory board must be filled in a manner consistent with the original appointments.

(3) All appointments to the advisory board must be made no later than July 10, 2012. After a majority of the members are appointed, the advisory board shall meet on a date mutually agreed upon by a majority of the members for the purposes of organizing the advisory board and establishing rules for transacting its business. A majority of the members of the advisory board shall constitute a quorum at all advisory board meetings. An affirmative vote of a majority of the members present and voting shall be required in the making recommendations by the advisory board. At the organizational meeting, the advisory board shall elect a chair and vice chair from the members appointed according to paragraphs (a) through (*l*) of subsection (1). The chair shall serve for a term of two (2) years, upon the expiration of which the vice chair shall assume the office of chair.

(4) After the organizational meeting, the advisory board shall hold no less than two (2) meetings annually.

(5) The advisory board may form an executive committee for the purpose of transacting business that must be conducted before the next regularly scheduled meeting of the advisory board. All actions taken by the executive committee must be ratified by the advisory board at its next regularly scheduled meeting.

(6) Members of the advisory board shall serve without compensation, but may be reimbursed, subject to the availability of funding, for mileage and actual and necessary expenses incurred in attending meetings of the advisory board.

(7) The advisory board shall be housed at the University of Mississippi Medical Center.

HISTORY:

Laws, 2012, ch. 472, § 2, eff from and after passage (approved Apr. 24, 2012).

§ 41-123-5. Powers and duties of Office of Mississippi Physician Workforce.

The Office of Mississippi Physician Workforce shall have the following powers and duties, at a minimum:

(a) Developing the administrative policy for the advisory board and the Office of Mississippi Physician Workforce;

(b) Developing and implementing strategies and activities for the office and for the implementation of an evolving strategic plan to provide for the physician workforce needs of Mississippi. In developing these strategies, the

Office of Mississippi Physician Workforce and the advisory board shall seek the input of various organizations and entities including the Mississippi State Medical Association, the Mississippi Academy of Family Physicians, the Mississippi Chapters of the American College of Physicians, American Academy of Pediatrics, and American College of OB-GYN, the Mississippi Medical and Surgical Association, and the Mississippi Osteopathic Medicine Association;

(c) Establishing a budget to support the activities of the office and periodically reviewing and if appropriate, revising, that budget to meet its mission;

(d) Selecting, hiring and supervising the Director of the Office of Mississippi Physician Workforce;

(e) Reviewing the activities of the office and guiding the office in accomplishing the strategic goal of providing Mississippi's physician workforce needs.

HISTORY:

Laws, 2012, ch. 472, § 3, eff from and after passage (approved Apr. 24, 2012).

§ 41-123-7. Policies and procedures for awarding state financial support for creation of family medicine residency programs.

(1) The advisory board shall recommend policies and procedures for the awarding of state funding that creates and/or provides sustaining support for the desired number of ACGME accredited Family Medicine residency programs and other valued and needed ACGME residencies approved by the advisory board that will accept both M.D. and D.O. students.

(2) UMMC with the input of the advisory board shall have the authority to award financial support, from funds specifically appropriated for that purpose by the Legislature, of up to Three Million Dollars ($3,000,000.00) to any hospital or entity with demonstrated commitment and resources, as determined by UMMC with input from the advisory board, to establish and operate an ACGME accredited Family Medicine residency program or other GME program qualifying under subsection (1) of this section. The funds will be dispersed at the determination of UMMC, with input from the advisory board, and may include start-up funding and/or provide sustaining support for residency programs.

(3) Each applicant for state financial support for creation of an ACGME residency program as authorized under this section must submit an application to UMMC through the Office of Mississippi Physician Workforce that conforms to requirements established by this chapter and by UMMC with input from the advisory board.

(4) In selecting recipients for state financial support authorized under this section, following criteria and recommendations from the advisory board, UMMC may use its discretion to award funding based on demographic needs and the future success of the residency program.

(5) An applicant for state financial support for creation of an ACGME

accredited residency program may receive funding only upon approval of UMMC with input from the advisory board.

HISTORY:

Laws, 2012, ch. 472, § 4; Laws, 2017, ch. 314, § 2, eff from and after July 1, 2017.

Amendment Notes —

The 2017 amendment rewrote (1), which read: "The advisory board shall recommend policies and procedures for the awarding of state funding that creates the desired number of accredited Family Medicine residency programs that will accept both M.D. and D.O. students needed in the State of Mississippi"; in (2), deleted "distributed over three (3) years" following "($3,000,000.00)," and inserted "ACGME" and "or other GME program" in the first sentence and "and/or provide sustain support" in the last sentence; in (3), substituted "an ACGME" for "a Family Medicine," inserted "through the Office of Mississippi Physician Workforce," and made minor stylistic changes; rewrote (4), which read: "In selecting recipients for state financial support authorized under this section, the UMMC may use its discretion to award funding based on geographic needs and the future success of a Family Medicine residency program"; and substituted "an ACGME accredited" for "a Family Medicine" in (5).

§ 41-123-9. Adherence by recipient to policies and practices to continue receiving state financial support; authorized uses of financial support.

(1) Hospitals, other entities and/or residency programs must adhere to the policies and practices as stipulated by the Office of Mississippi Physician Workforce to continue receiving state financial support under this chapter.

(2) Hospitals, other entities and/or residency programs may receive state financial support that may be provided by the Office of Mississippi Physician Workforce pursuant to this chapter. Any financial support awarded by the Office of Mississippi Physician Workforce must be used for only the creation of a residency or for residency operational expenses, or the recipient will be liable for repayment of any financial support received under this chapter.

HISTORY:

Laws, 2012, ch. 472, § 5, eff from and after passage (approved Apr. 24, 2012).

§ 41-123-11. Residency programs established with state financial support to accept students from accredited allopathic and osteopathic medical schools.

Any residency program established with state financial support must at a minimum be capable of accepting students from both allopathic and osteopathic medical schools that are accredited by the Liaison Committee on Medical Education (LCME) or the Commission on Osteopathic College Accreditation (COCA) of the American Osteopathic Association (AOA).

HISTORY:

Laws, 2012, ch. 472, § 6; Laws, 2017, ch. 314, § 3, eff from and after July 1, 2017.

Amendment Notes —

The 2017 amendment deleted "Family Medicine" preceding "residency program"; inserted "at a minimum" and "the Commission on Osteopathic College Accreditation (COCA) of"; and substituted "both allopathic and osteopathic medical schools" for "both medical and osteopathic schools."

§ 41-123-13. Funding for operation of Office of Mississippi Physician Workforce.

Funding for the operation of the Office of Mississippi Physician Workforce and the Mississippi Physician Workforce Advisory Board, including the salary of the director of the office and all necessary staff, shall be paid from funds specifically appropriated for that purpose by the Legislature.

HISTORY:

Laws, 2012, ch. 472, § 7, eff from and after passage (approved Apr. 24, 2012).

CHAPTER 125.

PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS (PPEC)

Sec.

41-125-1. Legislative intent.
41-125-3. Definitions.
41-125-5. PPEC centers to be licensed; exemptions.
41-125-7. Separate licenses required; fee; exemption [Repealed effective July 1, 2020].
41-125-9. Application for license; zoning.
41-125-11. Background screening.
41-125-13. Denial, suspension, revocation of licensure; administrative fines; grounds.
41-125-15. Administrative fines; corrective action plans.
41-125-17. Closing of a PPEC center.
41-125-19. Rules establishing standards.
41-125-21. Construction and renovation; requirements.
41-125-23. Penalty for violation.

§ 41-125-1. Legislative intent.

It is the intent of the Legislature to develop, establish, and enforce licensure and basic standards for prescribed pediatric extended care centers in order to assure that the centers provide the necessary family-centered medical, developmental, physiological, nutritional, psychosocial and family training services.

HISTORY:

Laws, 2012, ch. 524, § 1, eff from and after passage (approved May 18, 2012).

§ 41-125-3. Definitions.

As used in this chapter, the following terms shall be defined as provided in this section:

(a) "Prescribed pediatric extended care center" or "PPEC center" means any building or buildings, or other place, whether operated for profit or not, which undertakes through its ownership or management to provide basic nonresidential services to three (3) or more medically dependent or technologically dependent children who are not related to the owner or operator by blood, marriage or adoption and who require such services. Infants and children considered for admission to a PPEC center must have complex medical conditions that require continual care. Prerequisites for admission are a prescription from the child's attending physician and consent of a parent or guardian.

(b) "Licensing agency" means the State Department of Health.

(c) "Basic services" include, but are not limited to, development, implementation and monitoring of a comprehensive protocol of care, developed in conjunction with the parent or guardian, which specifies the medical, nursing, psychosocial and developmental therapies required by the medically dependent or technologically dependent child served as well as the caregiver training needs of the child's legal guardian.

(d) "Owner or operator" means a licensee.

(e) "Medical records" means medical records maintained in accordance with accepted professional standards and practices as specified in the rules implementing this chapter.

(f) "Medically dependent or technologically dependent child" means a child who because of a medical condition requires continuous therapeutic interventions or skilled nursing supervision which must be prescribed by a licensed physician and administered by, or under the direct supervision of, a licensed registered nurse.

(g) "Supportive services or contracted services" include, but are not limited to, speech therapy, occupational therapy, physical therapy, social work, developmental, child life and psychological services.

HISTORY:

Laws, 2012, ch. 524, § 2, eff from and after passage (approved May 18, 2012).

§ 41-125-5. PPEC centers to be licensed; exemptions.

(1) The licensing agency shall license and regulate all PPEC centers in the state that are not exempt under subsection (2) of this section. A license issued by the department is required for the operation of a PPEC center in this state.

(2) A facility, institution or other place operated by the federal government or any agency of the federal government is exempt from the provisions of this chapter.

HISTORY:

Laws, 2012, ch. 524, § 3, eff from and after passage (approved May 18, 2012).

§ 41-125-7. Separate licenses required; fee; exemption [Repealed effective July 1, 2020].

(1) Separate licenses are required for PPEC centers maintained on separate premises, even though they are operated under the same management. Separate licenses are not required for separate buildings on the same grounds.

(2) An applicant or licensee shall pay a fee for each license application and annual license renewal under this chapter and applicable rules. The amount of the fee shall be Twenty Dollars ($20.00) for each licensed bed in the PPEC, with a minimum fee of Five Hundred Dollars ($500.00) and a maximum fee of Five Thousand Dollars ($5,000.00). Any increase in the fee charged by the licensing agency under this subsection shall be in accordance with the provisions of Section 41-3-65.

(3) County-operated or municipally operated PPEC centers applying for licensure under this chapter are exempt from the payment of license fees.

HISTORY:

Laws, 2012, ch. 524, § 4; Laws, 2016, ch. 510, § 27, eff from and after July 1, 2016.

Editor's Notes —

Laws of 2016, ch. 510, § 65 provides:

"SECTION 65. This act shall stand repealed on July 1, 2020."

§ 41-125-9. Application for license; zoning.

In addition to any other information in the application that is required by the licensing agency, the application must contain the location of the facility for which a license is sought and documentation, signed by the appropriate local government official, which states that the applicant has met local zoning requirements.

HISTORY:

Laws, 2012, ch. 524, § 5, eff from and after passage (approved May 18, 2012).

§ 41-125-11. Background screening.

The licensing agency shall require criminal record background screening and fingerprinting for personnel by the Mississippi Department of Public Safety.

HISTORY:

Laws, 2012, ch. 524, § 6, eff from and after passage (approved May 18, 2012).

§ 41-125-13. Denial, suspension, revocation of licensure; administrative fines; grounds.

(1) The licensing agency may deny, revoke, and suspend a license and impose an administrative fine as provided in Section 41-125-15 for the violation of any provision of this chapter, or applicable rules.

(2) Any of the following actions by a PPEC center or its employee is grounds for action by the licensing agency against a PPEC center or its employee:

(a) An intentional or negligent act materially affecting the health or safety of children in the PPEC center.

(b) A violation of the provisions of this chapter, or applicable rules.

(c) Multiple and repeated violations of this chapter or of minimum standards or rules adopted under this chapter.

HISTORY:

Laws, 2012, ch. 524, § 7, eff from and after passage (approved May 18, 2012).

§ 41-125-15. Administrative fines; corrective action plans.

(1)(a) If the licensing agency determines that a PPEC center is not in compliance with this chapter, or applicable rules, the licensing agency may request that the PPEC center submit a corrective action plan that demonstrates a good-faith effort to remedy each violation by a specific date, subject to the approval of the licensing agency.

(b) The licensing agency may fine a PPEC center or employee found in violation of this chapter, or applicable rules, in an amount not to exceed Five Hundred Dollars ($500.00) for each violation. Such fine may not exceed Five Thousand Dollars ($5,000.00) in the aggregate.

(c) The failure to correct a violation by the date set by the licensing agency, or the failure to comply with an approved corrective action plan, is a separate violation for each day that the failure continues, unless the licensing agency approves an extension to a specific date.

(2) In determining if a fine is to be imposed and in fixing the amount of any fine, the licensing agency shall consider the following factors:

(a) The gravity of the violation, including the probability that death or serious physical or emotional harm to a child will result or has resulted, the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or rules were violated.

(b) Actions taken by the owner or operator to correct violations.

(c) Any previous violations.

(d) The financial benefit to the PPEC center of committing or continuing the violation.

HISTORY:
Laws, 2012, ch. 524, § 8, eff from and after passage (approved May 18, 2012).

§ 41-125-17. Closing of a PPEC center.

Whenever a PPEC center voluntarily discontinues operation, it shall, at least thirty (30) days before the discontinuance of operation, inform each child's legal guardian of the fact and the proposed time of the discontinuance.

HISTORY:
Laws, 2012, ch. 524, § 9, eff from and after passage (approved May 18, 2012).

§ 41-125-19. Rules establishing standards.

(1) To carry out the intention of the Legislature to provide safe and sanitary facilities and healthful programs, the licensing agency shall adopt and publish rules to implement the provisions of this chapter, which shall include reasonable and fair standards. Any conflict between these standards and those that may be set forth in local, county or city ordinances shall be resolved in favor of those having statewide effect. Those standards shall relate to:

(a) The assurance that PPEC services are family centered and provide individualized medical, developmental and family training services.

(b) The maintenance of PPEC centers, based upon the size of the structure and number of children, relating to plumbing, heating, lighting, ventilation and other building conditions, including adequate space, which will ensure the health, safety, comfort and protection from fire of the children served.

(c) The appropriate provisions of the most recent edition of the "Life Safety Code" shall be applied.

(d) The number and qualifications of all personnel who have responsibility for the care of the children served.

(e) All sanitary conditions within the PPEC center and its surroundings, including water supply, sewage disposal, food handling and general hygiene, and maintenance thereof, which will ensure the health and comfort of children served.

(f) Programs and basic services promoting and maintaining the health and development of the children served and meeting the training needs of the children's parents or legal guardians.

(g) Supportive, contracted, other operational and transportation services.

(h) Maintenance of appropriate medical records, data and information relative to the children and programs. Those records shall be maintained in the facility for inspection by the agency.

(2) The licensing agency shall adopt rules to ensure that:

(a) No child attends a PPEC center for more than twelve (12) hours within a twenty-four-hour period.

(b) No PPEC center provides services other than those provided to medically or technologically dependent children.

HISTORY:

Laws, 2012, ch. 524, § 10, eff from and after passage (approved May 18, 2012).

§ 41-125-21. Construction and renovation; requirements.

The requirements for the construction or renovation of a PPEC center shall comply with:

(a) All state and local requirements pertaining to building construction standards, including plumbing, electrical code, glass, manufactured buildings, accessibility for the physically disabled;

(b) The minimum standards for physical facilities in the Mississippi Child Care Standards; and

(c) The standards or rules adopted under this chapter.

HISTORY:

Laws, 2012, ch. 524, § 11, eff from and after passage (approved May 18, 2012).

§ 41-125-23. Penalty for violation.

Any person who violates any provisions of this chapter is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than Ten Thousand Dollars ($10,000.00). Each day of continuing violation is a separate offense.

HISTORY:

Laws, 2012, ch. 524, § 12, eff from and after passage (approved May 18, 2012).

Cross References —

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 127.

TELEMEDICINE SERVICES

Sec.
41-127-1. Licensed health care practitioners authorized to provide health care services via electronic means; standards of practice.

§ 41-127-1. Licensed health care practitioners authorized to provide health care services via electronic means; standards of practice.

Subject to the limitations of the license under which the individual is practicing, a health care practitioner licensed in this state may prescribe, dispense, or administer drugs or medical supplies, or otherwise provide treatment recommendations to a patient after having performed an appropriate examination of the patient either in person or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically. Treatment recommendations made via electronic means, including issuing a prescription via electronic means, shall be held to the same standards of appropriate practice as those in traditional provider-patient settings.

HISTORY:

Laws, 2013, ch. 478, § 2, eff from and after July 1, 2013.

CHAPTER 129.

UMBILICAL CORD BLOOD BANKING PROGRAM ACT

Sec.
41-129-1. Umbilical cord blood banking program established; duties of State Department of Health; funding.

§ 41-129-1. Umbilical cord blood banking program established; duties of State Department of Health; funding.

(1) **Short title.** This section shall be known and may be cited as "The Umbilical Cord Blood Banking Program Act."

(2)(a) **Umbilical Cord Blood Banking Program; establishment; duties of the State Department of Health; funding.** The Umbilical Cord Blood Banking Awareness Program is established and the State Department of Health is authorized to promote public awareness of the potential benefits of cord blood banking.

(b) The department shall:

(i) Develop a public education and outreach campaign via written materials, brochures, the Internet, and public service announcements to promote cord blood banking awareness and the benefits of cord blood banking.

(ii) Develop educational materials and brochures which shall be made available to health care practitioners, including obstetricians, gynecologists and pediatricians, health maintenance organizations, hospitals, walk-in medical centers, mobile care units, surgical centers, urgent care centers, and clinics and organizations serving pregnant women.

(iii) Promote professional education programs for health care providers on the benefits of cord blood banking.

(iv) Promulgate rules and regulations necessary to implement the provisions of this act in accordance with the Administrative Procedures Act.

(3) The State Department of Health shall accept and expend any grants, awards or other funds as may be made available for the purposes of this section. Subject to an appropriation from the Legislature, the department shall implement the provisions of this section.

(4) The State Department of Health is prohibited from using the Umbilical Cord Blood Banking Program for cloning or DNA research purposes.

(5) Cord blood banks may prepare and provide brochures and other written materials for distribution to promote cord blood banking awareness and the benefits of cord blood banking, if the brochures and materials are first approved by the State Department of Health.

HISTORY:

Laws, 2014, ch. 452, § 1, eff from and after July 1, 2014.

CHAPTER 131.

RIGHT TO TRY ACT

Sec.
41-131-1. Right to try act; definitions; availability of investigational drug, biological product, or device; insurance coverage; action against health care provider's license or Medicare certification prohibited; limitation of liability; severability.

§ 41-131-1. Right to try act; definitions; availability of investigational drug, biological product, or device; insurance coverage; action against health care provider's license or Medicare certification prohibited; limitation of liability; severability.

(1) This section shall be known and may be cited as the "Right to Try Act."

(2) For purposes of this section:

(a) "Eligible patient" means a person who meets all of the following requirements:

(i) Has a debilitating disability, terminal illness or life-threatening illness that has not responded or cannot be treated with currently approved products;

(ii) Has considered all other treatment options currently approved by the United States Food and Drug Administration and all relevant clinical trials conducted in this state;

(iii) Has received a prescription or recommendation from the person's physician for an investigational drug, biological product or device;

(iv) Has given written informed consent, which shall be at least as comprehensive as the consent used in clinical trials for the use of the investigational drug, biological product or device or, if the patient is a minor or lacks the mental capacity to provide informed consent, a parent or legal guardian has given written informed consent on the patient's behalf; and

(v) Has documentation from the person's physician that the person has met all of the requirements of this subsection.

(b) "Investigational drug, biological product or device" means a drug, biological product or device, any of which are used to treat the patient's disability or illness, and the use of which has been either described in a United States Food and Drug Administration/National Institutes of Health (FDA/NIH) approved protocol or study, or approved by an institutional review board (IRB). The drug, product or device must be produced in a manner consistent with the quality standards of an investigational drug, biological product or device in the United States (i.e. standards required by an FDA-approved trial) and must show prior evidence of safe usage in humans in the United States or other countries. The investigational drug, biological product or device must have successfully completed phase one of a clinical trial but has not been approved for general use by the United States

Food and Drug Administration and remains under investigation in a clinical trial. The term shall not include Schedule I controlled substances.

(c) "Terminal illness" means a disease that without life-sustaining procedures will result in death in the near future or a state of permanent unconsciousness from which recovery is unlikely.

(d) "Written informed consent" means a written document that is:

(i) Signed by the:

1. Patient;

2. Parent, if the patient is a minor;

3. Legal guardian; or

4. Patient advocate designated by the patient under the Uniform Health-Care Decisions Act, Section 41-41-201 et seq.; and

(ii) Attested to by the patient's physician and a witness and that, at a minimum, includes all of the following:

1. An explanation of the currently approved products and treatments for the disease or condition from which the patient suffers;

2. An attestation that the patient concurs with his or her physician in believing that all currently approved and conventionally recognized treatments are unlikely to prolong the patient's life;

3. Clear identification of the specific proposed investigational drug, biological product or device that the patient is seeking to use;

4. A description of the potentially best and worst outcomes of using the investigational drug, biological product or device and a realistic description of the most likely outcome. The description shall include the possibility that new, unanticipated, different, or worse symptoms might result and that death could be hastened by the proposed treatment. The description shall be based on the physician's knowledge of the proposed treatment in conjunction with an awareness of the patient's condition;

5. A statement that the patient's health plan or third-party administrator and provider are not obligated or required to pay for any cost of any investigational drug, biological product or device or for any care or treatments consequent to the use of the investigational drug, biological product or device, unless they are specifically required to do so by law or contract;

6. A statement that the patient's eligibility for hospice care may be withdrawn if the patient begins curative treatment with the investigational drug, biological product or device and that care may be reinstated if this treatment ends and the patient meets hospice eligibility requirements; and

7. A statement that the patient understands that he or she is liable for all expenses consequent to the use of the investigational drug, biological product or device and that this liability extends to the patient's estate, unless a contract between the patient and the manufacturer of the drug, biological product or device states otherwise. The patient's health plan or third-party administrator are not liable for any outstanding debt related to the treatment or lack of insurance consequent to the use of the investigational drug, biological product or device.

(3) A manufacturer of an investigational drug, biological product or device may make available the manufacturer's investigational drug, biological product or device to eligible patients under this section. This section does not require that a manufacturer make available an investigational drug, biological product or device to an eligible patient. A manufacturer may:

(a) Provide an investigational drug, biological product or device to an eligible patient without receiving compensation; or

(b) Require an eligible patient to pay the costs of or associated with the manufacture of the investigational drug, biological product or device.

(4) This section does not require a health care insurer to provide coverage for the cost of any investigational drug, biological product or device. However, a health care insurer may provide coverage for an investigational drug, biological product or device.

(5) This section does not require the Mississippi Department of Corrections or any other governmental agency to provide coverage for the cost of any investigational drug, biological product or device.

(6) This section does not require a licensed hospital or nursing home to provide new or additional services, unless approved by the hospital or facility.

(7) This section does not require a licensed physician to offer any investigational drug, biological product or device.

(8) Notwithstanding any other provision of law to the contrary, no state agency or regulatory board shall revoke, fail to renew, or take any other action against a physician's license under Section 73-25-1 et seq., or against a pharmacist's license under Section 73-21-71 et seq., based solely on the physician's or pharmacist's recommendation to an eligible patient regarding prescription for or treatment with an investigational drug, biological product or device. Action against a health care provider's Medicare certification based solely on the health care provider's recommendation that a patient have access to an investigational drug, biological product or device is prohibited.

(9) If the clinical trial is closed due to lack of efficacy or toxicity, the drug shall not be offered. If notice is given on a drug, product or device taken by a patient outside of a clinical trial, the pharmaceutical company or patient's physician shall notify the patient of the information from the safety committee of the clinical trial.

(10) Except in the case of gross negligence or willful misconduct, the patient's health plan, third-party administrator, or any person who manufactures, imports, distributes, prescribes, dispenses, compounds or administers an investigational drug or device to an eligible patient with a terminal illness in accordance with this section shall not be liable in any action under state law for any loss, damage or injury arising out of, relating to, or resulting from:

(a) The design, development, clinical testing and investigation, manufacturing, labeling, distribution, sale, purchase, donation, dispensing, compounding, prescription, administration, or use of the drug or device; or

(b) The safety or effectiveness of the drug or device.

The immunity provided under this subsection (10) is fully applicable to the owner of a hospital or other licensed health care facility rendering services to an eligible patient where the investigational drug is used or purchased only with regard to the use of the investigational drug, biological product or device at the facility.

(11) If a provision of this section or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

HISTORY:

Laws, 2015, ch. 423, § 1; Laws, 2016, ch. 415, § 1, eff from and after passage (approved Apr. 13, 2016).

CHAPTER 133.

LAY CAREGIVERS FOR HOSPITAL PATIENTS

Sec.	
41-133-1.	Definitions.
41-133-3.	Opportunity to designate lay caregiver; timing; by whom.
41-133-5.	Notification to designated lay caregiver of patient's discharge.
41-133-7.	Providing information about aftercare to patient and designated lay caregiver.
41-133-9.	Chapter not to interfere with rights under Uniform Health-Care Decisions Act.
41-133-11.	Use of state or federal funds for payment to lay caregiver prohibited.

§ 41-133-1. Definitions.

For the purposes of this chapter:

(a) "Aftercare" means any assistance provided by a designated lay caregiver to an individual under this chapter after the patient's discharge from a hospital. The assistance may include tasks that are limited to the patient's condition at the time of discharge that do not require a licensed professional.

(b) "Discharge" means a patient's exit or release from a hospital to the patient's residence after any inpatient stay.

(c) "Hospital" means a facility licensed under the provisions of Section 41-9-1 et seq.

(d) "Lay caregiver" means any individual eighteen (18) years of age or older, including next-of-kin, duly designated as a lay caregiver under this chapter who provides aftercare assistance to a patient in the patient's residence.

(e) "Residence" means a dwelling considered by a patient to be his or her home, not including any hospital, nursing home, rehabilitation facility, assisted living facility or group home licensed by the State Department of Health.

HISTORY:
Laws, 2015, ch. 434, § 1, eff from and after July 1, 2015.

§ 41-133-3. Opportunity to designate lay caregiver; timing; by whom.

(1) Upon inpatient admission to a hospital, each patient or patient's legal guardian shall have the opportunity to designate one (1) lay caregiver after the patient's admission into a hospital and before the patient's discharge to the residence.

(a) If the patient is unconscious or otherwise incapacitated upon inpatient admission to the hospital, the patient's legal guardian shall have an opportunity to designate one (1) lay caregiver after the patient's recovery of consciousness or capacity, so long as the designation or lack of designation does not interfere with, delay or otherwise affect the medical care provided to the patient.

(b) If the patient or the patient's legal guardian does not designate a lay caregiver under this chapter, the hospital shall document that in the patient's medical record.

(c) If the patient or the patient's legal guardian designates a lay caregiver under this subsection (1), the hospital shall promptly request the written consent of the patient or the patient's legal guardian to release medical information to the designated lay caregiver in accordance with the hospital's established procedures for releasing personal health information and in compliance with applicable state and federal law.

(d) If the patient or the patient's legal guardian does not consent to the release of medical information to the designated lay caregiver, the hospital is not required to provide notice to the lay caregiver under Section 41-133-5.

(e) If the patient or the patient's legal guardian designates a lay caregiver under this subsection (1), the hospital shall record the designation of the lay caregiver, the relationship of the lay caregiver to the patient, and the name, telephone number and physical address of the designated lay caregiver in the patient's medical record.

(2) A patient or the patient's legal guardian may elect to change his or her designated lay caregiver if the lay caregiver becomes incapacitated.

(3) Designation of a lay caregiver by a patient or a patient's legal guardian under this chapter does not obligate any individual to perform any aftercare tasks for the patient.

(4) This section shall not be construed so as to require a patient or a patient's legal guardian to designate any individual as a lay caregiver.

HISTORY:
Laws, 2015, ch. 434, § 2, eff from and after July 1, 2015.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (1)(a) by substituting "admission to the hospital" for "admission the hospital." The Joint Committee ratified the correction at its August 17, 2015, meeting.

§ 41-133-5. Notification to designated lay caregiver of patient's discharge.

If a patient or the patient's legal guardian has designated a lay caregiver under this chapter, a hospital shall notify the designated lay caregiver of the patient's discharge to the patient's residence or transfer to another licensed facility as soon as practicable. If the hospital is unable to contact the designated lay caregiver, the lack of contact shall not interfere with, delay or otherwise affect the medical care provided to the patient, or an appropriate discharge of the patient.

HISTORY:
Laws, 2015, ch. 434, § 3, eff from and after July 1, 2015.

§ 41-133-7. Providing information about aftercare to patient and designated lay caregiver.

If a patient or patient's legal guardian has designated a lay caregiver, a hospital employee shall provide an opportunity for the caregiver and patient to ask questions about the aftercare tasks and shall discuss the discharge plan with the caregiver in a competent manner and in accordance with the hospital's requirements under state and federal law.

HISTORY:
Laws, 2015, ch. 434, § 4, eff from and after July 1, 2015.

§ 41-133-9. Chapter not to interfere with rights under Uniform Health-Care Decisions Act.

(1) Nothing in this chapter shall be construed to interfere with the rights of a person legally authorized to make health care decisions under the Uniform Health-Care Decisions Act, Section 41-41-201 et seq.

(2) Nothing in this chapter shall be construed to create a private right of action against a hospital, hospital employee, a duly authorized agent of the hospital, or otherwise supersede or replace existing rights or remedies under any other general or special law.

HISTORY:
Laws, 2015, ch. 434, § 5, eff from and after July 1, 2015.

§ 41-133-11. Use of state or federal funds for payment to lay caregiver prohibited.

No state or federal funds shall be used for payment to any lay caregiver as defined in this chapter after discharge from a hospital, and no state or federal program funding shall be impacted by this chapter.

HISTORY:
Laws, 2015, ch. 434, § 6, eff from and after July 1, 2015.

CHAPTER 135.

SUPPORT AND PROMOTION OF BREAST-FEEDING IN MISSISSIPPI

Sec.

41-135-1.	Legislative findings and intent.
41-135-3.	Definitions.
41-135-5.	Adoption of breast-feeding infant feeding policy by hospitals that provide birth services.
41-135-7.	Breast-Feeding in Mississippi: Guidelines.
41-135-9.	Preparation of video about importance of breast-feeding infants for presentation in certain Department of Health offices and other state agencies.

§ 41-135-1. Legislative findings and intent.

(1) The Legislature of the State of Mississippi acknowledges that extensive research demonstrates the wide-ranging and compelling benefits of breast-feeding for infants, mothers, families and communities, including:

(a) Numerous health benefits to the child, such as lower incidences of SIDS, childhood obesity, asthma, allergies and diabetes as well as increased intelligence and parental attachment;

(b) Numerous health benefits to the mother, such as decreased rates of breast cancer, ovarian cancer, postpartum hemorrhage, and reduced rates of obesity through increased postpartum weight loss; and

(c) Significant economic and social benefits to the state, such as reduced health care costs, and reduced employee absenteeism for care attributable to child illness as well as direct saving to families, as the United States Surgeon General estimates that the average family can save between One Thousand Two Hundred Dollars ($1,200.00) and One Thousand Five Hundred Dollars ($1,500.00) during a baby's first year of life through breast-feeding.

(2) The Legislature also recognizes, despite these numerous benefits, that Mississippi has one of the lowest breast-feeding rates in the country and acknowledges that mothers in Mississippi face many barriers to breast-feeding. One (1) of these barriers is education, which many studies and reports have found to be a significant obstacle that inhibits the practice of breast-feeding. Many mothers are ill-informed about the benefits of breast-feeding and their rights as a breast-feeding mother.

(3) Therefore, the Legislature declares the intent of this chapter is to inform mothers about the benefits of breast-feeding and their rights as a breast-feeding mother in order to promote increased rates of breast-feeding in Mississippi.

HISTORY:

Laws, 2016, ch. 502, § 1, eff from and after July 1, 2016.

§ 41-135-3. Definitions.

As used in this chapter, the following words and phrases have the meanings as defined in this section:

(a) "Prenatal" means the period between conception to birth.

(b) "Perinatal" means the period from twenty-two (22) weeks of gestation to twenty-eight (28) days after birth.

(c) "Public place" means a place of increased patient traffic within the maternal health care facility such as a lobby area or waiting room.

(d) "Maternal health care facility" means any facility that provides prenatal or perinatal care, including, but not limited to, hospitals, clinics and other physician facilities.

(e) "Maternal health care provider" means any physician, nurse or other authorized practitioner that attends to pregnant women and mothers of infants.

(f) "Breast-Feeding in Mississippi: Guidelines" is the statement of rights required by Section 41-135-7.

HISTORY:

Laws, 2016, ch. 502, § 2, eff from and after July 1, 2016.

§ 41-135-5. Adoption of breast-feeding infant feeding policy by hospitals that provide birth services.

(1) Hospitals that provide birth services may adopt an infant feeding policy that promotes and supports breast-feeding. Any infant feeding policies adopted under this section shall include guidance on the use of formula (a) for medically necessary supplementation; (b) if preferred by the mother; or (c) when exclusive breast-feeding is not advised for the mother and/or infant.

(2) Any breast-feeding infant feeding policy adopted under this section must be written down and all relevant hospital personnel, including, but not limited to, obstetric and neonatal staff, must be trained in the necessary skills to implement the adopted policy.

(3) Hospitals may make a copy of their breast-feeding infant feeding policy available to the State Department of Health.

HISTORY:

Laws, 2016, ch. 502, § 3, eff from and after July 1, 2016.

§ 41-135-7. Breast-Feeding in Mississippi: Guidelines.

(1) The State Department of Health shall prepare a statement of rights regarding "Breast-Feeding in Mississippi: Guidelines." Maternal health care facilities in the state should make every reasonable effort to post a copy of the statement of rights conspicuously in a public place of the maternal health care facility. The statement of rights shall be of an adequate size and font so as to be easily read by all visitors and/or patients within the room or space.

(2) The State Department of Health shall make available to every

maternal health care provider and maternal health care facility, via its website, a template copy of the statement of rights for use within their facilities. If they post a statement of rights, maternal health care providers and maternal health care facilities are free to choose whether to use the Department of Health template or develop their own copy as long as it comports to the visibility requirements in subsection (1) of this section.

(3) The State Department of Health shall revise the "Breast-feeding in Mississippi: Guidelines" as needed to reflect advances in research regarding breast-feeding and to incorporate any additional rights of breast-feeding mothers as subsequently granted by the Mississippi Legislature, and hospitals may post the revised version of the "Breast-feeding in Mississippi: Guidelines" within three (3) months of its updated publishing.

(4) The State Board of Health shall adopt any rules and regulations necessary to ensure the display of these rights.

HISTORY:

Laws, 2016, ch. 502, § 4, eff from and after July 1, 2016.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (3) by substituting "revised version of the Breast-feeding in Mississippi: Guidelines" for "revised version on the Breast-feeding in Mississippi: Guidelines." The Joint Committee ratified the correction at its August 5, 2016, meeting.

§ 41-135-9. Preparation of video about importance of breast-feeding infants for presentation in certain Department of Health offices and other state agencies.

The State Department of Health shall prepare a video in an appropriate medium for presentation in offices of the department in which the department provides benefits to women of child-bearing age, which shall provide information about the importance of breast-feeding infants. Applicants for and recipients of any such benefits provided by the department may view the video in the offices of the department. The department may provide the video to other state agencies that provide benefits to women of child-bearing age, for appropriate use by those agencies.

HISTORY:

Laws, 2016, ch. 502, § 5, eff from and after July 1, 2016.

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  Possessing firearm, deadly weapon or explosive on grounds, §41-19-279.
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Catchment area.
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CBD solution.
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Individual on-site wastewater disposal system law, §41-67-2.
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Individual on-site wastewater disposal system law, §41-67-2.
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Individual on-site wastewater disposal system law, §41-67-2.
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Health care certificate of need law, §41-7-173.
Child.
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Clerk.
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Clinical health services.
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Cluster system.
Individual on-site wastewater disposal system law, §41-67-2.
Commencement of construction.
Health care certificate of need law, §41-7-173.
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Interception of wire or oral communications, §41-29-501.
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Consortium.
  Alcoholism and alcohol abuse, §41-30-3.
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Contaminant.
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  Interception of wire or oral communications, §41-29-501.
Contraceptive procedures.
  Family planning law of 1972, §41-42-3.
Contraceptive supplies.
  Family planning law of 1972, §41-42-3.
Controlled premises.
  Uniform controlled substances law, §41-29-157.
Controlled substance, §41-29-105.
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Institutional health services.
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Intercept.
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Intoxicated person, §41-30-3.
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Investigational drug, biological product or device.
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Investigative or law enforcement officer.
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Lay caregiver.
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Leased facility.
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License.
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Licensed practitioner.
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Licensed professional engineer.
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Licensee.
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Licensing agency.
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LMP.
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Maternal health care provider.
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Medical control.
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Medical director.
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Medical treatment.
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Member state.
  EMS personnel licensure interstate compact, §41-59-101.
Minors.
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Misleading.
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National primary drinking water regulations.
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Nonclinical health services.
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Nonforfeitable benefit.
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Nontransient, noncommunity water system.
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Operating.
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Oral communication.
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Other communication.
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Owner.
  Community hospitals, §41-13-10.
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Palliative care.
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Paramedic.
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Paraphernalia.
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Parent.
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Part.
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Participate.
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Participating agencies.
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Pay.
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Payment.
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Pediatric skilled nursing facility.
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Pen register, §41-29-701.
Performance-based system.
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Perinatal.
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Permit.
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Person.
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  Individual on-site wastewater disposal system law, §41-67-2.
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Person with intellectual disability.
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  Persons in need of mental treatment, §41-21-61.
Physician.
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  Family planning law of 1972, §41-42-3.
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Plan.
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Policy.
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Post-acute residential brain injury rehabilitation facility.
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Power of attorney for health care.
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PPEC center.
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Practitioner.
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Precursor drug or chemical.
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Pregnancy.
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Pregnant.
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Prenatal.
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Prescribed pediatric extended care centers, §41-125-3.
Primary care.
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Primary physician.
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Private review agent, §41-83-1.
Privilege to practice.
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Probable gestational age.
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Proceeding.
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Procurement organization.
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Program.
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Pronouncement of death.
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Property of the generator.
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Prosecutor.
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Prospective donor.
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Provider.
Health care certificate of need law, §41-7-173.
Psychiatric emergency services.
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Psychiatric hospital.
Health care certificate of need law, §41-7-173.
Psychiatric nurse practitioner.
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Psychiatric physician assistant.
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Psychiatric residential treatment facility.
Health care certificate of need law, §41-7-173.
Psychologist.
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Public facility.
Tobacco use by participant or spectator, §41-114-1.
Public place.
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Public water system.
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Purposely.
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Qualified homeowner.
Individual on-site wastewater disposal system law, §41-67-2.
Radiation technologist.
Medical radiation technology, §41-58-1.
Radiation therapy services.
Health care certificate of need law, §41-7-173.
Radiography.
Mammogram services, information to be provided to patients receiving, §41-58-9.
Radiologic technologist.
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Reasonably available.
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Recipient.
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Recommendation.
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Records.
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Hospital records, use at trial or administrative hearing, §41-9-101.
Referring physician.
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Remote state.
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Restricted.
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Retirement.
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Sales.
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Scope of practice.
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Seeks medical assistance.
Medical emergency good Samaritan act, §41-29-149.1.
Sell.
Uniform controlled substances law, §41-29-105.
Selling.
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Semi-public water system.
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Septage.
Individual on-site wastewater disposal system law, §41-67-2.
Serious health risk to the unborn child's mother.
Protection from dismemberment abortion act, §41-41-153.
Service area.
Community hospitals, §41-13-10.
Service grant.
Mississippi qualified health center grant program, §41-99-1.
Severe fetal abnormality.
Gestational age act, §41-41-191.
Women's health protection and preborn pain act, §41-41-133.
Sign.
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Significant investigatory information.
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Single point of entry.
Crisis intervention teams, §41-21-131.

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Skilled nursing facility.
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Smoking.
Tobacco use by participant or spectator at athletic event, §41-114-1.
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State.
Anatomical gifts, §41-39-103.
EMS personnel licensure interstate compact, §41-59-101.
Health-care decisions, §41-41-203.
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State agency.
State employees wellness program, §41-97-9.
State child health plan.
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State department of health.
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State employee.
State employees wellness program, §41-97-9.
State EMS authority.
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State health officer.
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State health plan.
Health care certificate of need law, §41-7-173.
State health planning and development agency.
Health care certificate of need law, §41-7-173.
State hospitals.
Alcoholism and alcohol abuse, §41-30-3.
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Stillbirth.
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Stillborn.
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